

**ADJOURNMENT**

On motion of Senator Truan, the Senate at 7:53 a.m. adjourned until 9:00 a.m. today.

---

**APPENDIX**

---

**SIGNED BY GOVERNOR**

(April 24, 1995)

S.B. 17 (Effective immediately)  
S.B. 97 (Effective September 1, 1995)  
S.B. 222 (Effective September 1, 1995)  
S.B. 253 (Effective August 28, 1995)  
S.B. 315 (Effective September 1, 1995)  
S.B. 584 (Effective immediately)

**FIFTY-SEVENTH DAY**

(Tuesday, April 25, 1995)

The Senate met at 9:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

A quorum was announced present.

Mr. Patrick Flood, Executive Director, Austin Metropolitan Ministries, offered the invocation as follows:

On this day, April 25, 1995, I ask that God's presence and grace be with this assembly. The Senate of the great State of Texas is made up of the men and women of this land; human beings who are called upon to make decisions, set directions, and be role models to us all. Give them the grace to decide and to act in the best interest of all our people, poor and rich.

Last Sunday, April 23, was the National Day of Mourning for Oklahoma City—a sister city and a sister state. The time has come to heal. The time has come to stop the vindictive and hateful speech that divides and provokes. The time has come to shun those who, for monetary, political, or just humorous gain, belittle and demonize others in this land. A great catastrophe reminds us that we are all human and none of us are less human. Tragedy strikes

us all equally. This great lesson of 1995 is the guide in your deliberations, in your compromises, in your actions. May God be with you. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

**CO-AUTHOR OF SENATE BILL 6**

On motion of Senator Harris and by unanimous consent, Senator Nelson will be shown as Co-author of **S.B. 6**.

**CO-AUTHOR OF SENATE BILL 7**

On motion of Senator Harris and by unanimous consent, Senator Nelson will be shown as Co-author of **S.B. 7**.

**CO-AUTHOR OF SENATE BILL 378**

On motion of Senator Moncrief and by unanimous consent, Senator Barrientos will be shown as Co-author of **S.B. 378**.

**CO-AUTHOR OF SENATE BILL 1564**

On motion of Senator Lucio and by unanimous consent, Senator Galloway will be shown as Co-author of **S.B. 1564**.

**CO-SPONSOR OF HOUSE BILL 722**

On motion of Senator Lucio and by unanimous consent, Senator Sims will be shown as Co-sponsor of **H.B. 722**.

**CO-SPONSOR OF HOUSE BILL 1863**

On motion of Senator Zaffirini and by unanimous consent, Senator Nelson will be shown as Co-sponsor of **H.B. 1863**.

**MESSAGE FROM THE HOUSE**

House Chamber  
April 25, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

**H.C.R. 172**, Recognizing April 22-29, 1995, as National Infant Immunization Week.

**H.C.R. 44**, Designating the prickly pear cactus as the official state plant.

Respectfully,

Cynthia Gerhardt, Chief Clerk  
House of Representatives

**SENATE RESOLUTIONS ON FIRST READING**

The following resolutions were introduced, read first time, and referred to the committees indicated:

**S.C.R. 127** by Lucio State Affairs  
Requesting the Texas Department of Transportation to study potential alternative routes of access to South Padre Island.

**S.C.R. 130** by Henderson Jurisprudence  
Directing the Supreme Court of Texas to adopt certain rules relating to attorney advertising.

**S.C.R. 131** by Madla, Nixon Administration  
Requesting the lieutenant governor and speaker to appoint a joint interim committee to study county road financing problems.

#### **HOUSE BILLS AND RESOLUTION ON FIRST READING**

The following bills and resolution received from the House were read first time and referred to the committees indicated:

**H.C.R. 30** to Committee on International Relations, Trade, and Technology.

**H.B. 27** to Committee on Intergovernmental Relations.

**H.B. 576** to Committee on Criminal Justice.

**H.B. 960** to Committee on Intergovernmental Relations.

**H.B. 1208** to Committee on Economic Development.

**H.B. 1551** to Committee on Jurisprudence.

**H.B. 1696** to Committee on Criminal Justice.

**H.B. 1914** to Committee on State Affairs.

**H.B. 1991** to Committee on Economic Development.

**H.B. 2283** to Committee on State Affairs.

**H.B. 2624** to Committee on Finance.

**H.B. 2725** to Committee on Jurisprudence.

**H.B. 3134** to Committee on Intergovernmental Relations.

**H.B. 3166** to Committee on Intergovernmental Relations.

#### **BILLS AND RESOLUTION SIGNED**

The President announced the signing of the following enrolled bills and resolution in the presence of the Senate after the captions had been read:

**S.B. 260**

**S.B. 436**

**S.B. 550**

**S.B. 821**

**S.B. 958**

**H.B. 1178**

**H.C.R. 3**

#### **GUESTS PRESENTED**

Senator Truan was recognized and introduced to the Senate a delegation of citizens from the Kingsville Chamber of Commerce.

The Senate welcomed its guests.

#### **SENATE RESOLUTION 711**

Senator Barrientos offered the following resolution:

**S.R. 711**, Declaring April 23 through April 29, 1995, as the Week of the Young Child.

The resolution was again read.

The resolution was previously adopted on Wednesday, April 12, 1995.

**GUESTS PRESENTED**

Senator Barrientos was recognized and introduced to the Senate representatives from the Austin Association for the Education of Young Children.

The Senate welcomed its guests.

**(Senator Truan in Chair)**

**MESSAGE FROM THE GOVERNOR**

The following Message from the Governor was read and was referred to the Committee on Nominations:

Austin, Texas  
April 25, 1995

TO THE SENATE OF THE SEVENTY-FOURTH LEGISLATURE,  
REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:

TO BE MEMBERS OF THE BOARD OF REGENTS OF TEXAS  
WOMAN'S UNIVERSITY for terms to expire February 1, 2001:

RONALD F. GARVEY, M.D.  
12657 Sunlight  
Dallas, Texas 75230

Dr. Garvey will be replacing James B. McCurry of Dallas, whose term expired.

KAY WILLIAMS GOODMAN  
Route 2, Box 1075  
Sanger, Texas 76266

Mrs. Goodman will be replacing Kris Anne Vogelpohl of Galveston, whose term expired.

RICHARD D. HAYES  
819 West Oak  
Denton, Texas 76201

Mr. Hayes will be replacing Don C. Reynolds of Fort Worth, whose term expired.

TO BE MEMBERS OF THE BOARD OF REGENTS OF EAST TEXAS  
STATE UNIVERSITY for terms to expire February 15, 2001:

R. JAY PHILLIPS  
410 Cape Cod  
Corpus Christi, Texas 78412

Mr. Phillips is being reappointed.

KERRY NOBLE CAMMACK  
Walden Oaks at Bull Creek #514  
6804 North Capitol of Texas Highway  
Austin, Texas 78731

Mr. Cammack is being reappointed.

JOHN R. ARMSTRONG  
7510 South Shore Lane  
Bonham, Texas 75418

Mr. Armstrong is being reappointed.

TO BE MEMBERS OF THE BOARD OF DIRECTORS OF TEXAS  
PUBLIC FINANCE AUTHORITY for terms to expire February 1, 2001:

JOHN C. KERR  
401 Terrell Road  
San Antonio, Texas 78209

Mr. Kerr will be replacing Erlinda Cortez Dimas of San Antonio, whose term expired.

DANIEL H. BRANCH  
3809 Colgate  
Dallas, Texas 75225

Mr. Branch will be replacing Peter Pincoffs of Austin, whose term expired.

TO BE MEMBERS OF THE TEXAS BOARD OF PARDONS AND  
PAROLES for terms to expire February 1, 2001:

BRENDOLYN ROGERS-GARDNER  
1038 Hayworth Avenue  
Duncanville, Texas 75137

Ms. Rogers-Gardner will be replacing Troy Fox of Palestine, whose term expired.

VICTOR RODRIGUEZ  
1522 Pinion Drive  
Brownsville, Texas 78521

Chief Rodriguez will be replacing Henry Keene of Angleton, whose term expired.

THOMAS W. MOSS  
2418 Hansford Drive  
Amarillo, Texas 79106

Mr. Moss will be replacing Iris Lawrence of Amarillo, whose term expired.

DANIEL RAY LANG  
5303 Climber Court  
Houston, Texas 77041

Mr. Lang will be replacing Daniel Downs of Angleton, whose term expired.

CYNTHIA S. TAUSS  
2106 Dornoch Drive  
League City, Texas 77573

Mrs. Tauss will be replacing Hub Bechtol of Palestine, whose term expired.

GERALD L. GARRETT  
2424 Emmett Parkway  
Austin, Texas 78728

Mr. Garrett will be replacing Jack Kyle of Huntsville, whose term expired.

Respectfully submitted,

/s/George W. Bush  
Governor of Texas

### CONCLUSION OF MORNING CALL

The Presiding Officer at 9:16 a.m. announced the conclusion of morning call.

### REPORT OF COMMITTEE ON NOMINATIONS

Senator Bivins submitted the following report from the Committee on Nominations:

To be Members of the TEXAS ALCOHOLIC BEVERAGE COMMISSION: Steven R. Baker, Harris County; Martha S. Dickie, Travis County.

To be Members of the STATE CONSERVATORSHIP BOARD: Carolyn Gallagher, Travis County; Byron Tunnell, Smith County; J. Michael Weiss, Lubbock County.

To be Members of the TEXAS JUVENILE PROBATION COMMISSION: Raul C. Garcia, Tom Green County; Commissioner Robert Tejeda, Bexar County.

To be Members of the TEXAS BOARD OF MENTAL HEALTH AND MENTAL RETARDATION: Dr. Rodolfo "Rudy" Arredondo, Jr., Lubbock County; Charles M. Cooper, Dallas County; James I. Perkins, Cherokee County.

To be PRESIDING JUDGE OF THE FIRST ADMINISTRATIVE JUDICIAL REGION: Judge Pat McDowell, Dallas County.

To be Members of the TEXAS STATE BOARD OF MEDICAL EXAMINERS DISTRICT ONE REVIEW COMMITTEE: Dr. A. David Axelrad, Harris County; Thomas A. Reiser, Harris County.

To be Members of the TEXAS STATE BOARD OF MEDICAL EXAMINERS DISTRICT THREE REVIEW COMMITTEE: Dr. Thomas L. Marvelli, Tarrant County; Robert Allan Watson, Tarrant County.

To be Members of the TEXAS STATE BOARD OF MEDICAL EXAMINERS DISTRICT FOUR REVIEW COMMITTEE: Dr. Julian Gomez III, Hidalgo County; Dr. Larry Hufford, Bexar County; Dr. Ann L. Nolen, Fayette County.

To be Members of the BOARD OF NURSE EXAMINERS: Nancy Boston, Bell County; Kenneth W. Lowrance, Bosque County; Roselyn

Holloway, Lubbock County; Doris Price-Nealy, Jefferson County; Robert J. Provan, Travis County.

To be a Member of the EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS: Dr. Charles P. Turco, Jefferson County.

To be Members of the SULPHUR RIVER BASIN AUTHORITY BOARD OF DIRECTORS: John McCool Howison, Red River County; Maxine J. Nanze, Cass County.

To be a Member of the COMMISSION ON UNIFORM STATE LAWS: Patrick C. Guillot, Dallas County.

To be Members of the TEXAS VETERANS COMMISSION: Herbert W. Odell, Tarrant County; Patsy L. Palmquist, Medina County.

To be Members of the STATE BOARD OF VETERINARY MEDICAL EXAMINERS: Dr. Robert I. Hughes, Shelby County; Sharon O. Matthews, Shackelford County; Dr. Michael Jay McCulloch, Ector County.

To be Members of the BOARD OF VOCATIONAL NURSE EXAMINERS: Susie Belle "Miller" Cheney, Camp County; Albert H. Fairweather, Travis County; Vangie F. Perez, Fort Bend County; Dr. Maria Olivia Rivas, Cameron County; Rudolph Robert Willmann, Jr., Bexar County; Janet Wood-Yanez, Hidalgo County.

#### **NOTICE OF CONSIDERATION OF NOMINATIONS**

Senator Bivins gave notice that he would tomorrow at the conclusion of morning call submit to the Senate for consideration nominations to agencies, boards, and commissions of the state.

#### **NOMINEES RECOMMITTED**

On motion of Senator Bivins and by unanimous consent, the following nominees, severed on Wednesday, March 15, 1995, were recommitted to the Committee on Nominations:

To be Members of the INTERAGENCY COUNCIL ON EARLY CHILDHOOD INTERVENTION SERVICES: Claudette Wilkinson Bryant, Dallas County; Karen Douglas, Bexar County; Dr. Tammy H. Tiner, Brazos County.

#### **NOMINATION RETURNED**

On motion of Senator Bivins and by unanimous consent, the Senate agreed to grant the request to return to the Governor the following nomination:

To be a Member of the BOARD OF NURSE EXAMINERS: Helen J. Dichoso, Fort Bend County.

**(Senator Armbrister in Chair)**

**SENATE BILL 1604 ON SECOND READING**

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1604**, Relating to the rural physician assistant loan reimbursement program.

The bill was read second time.

Senator Truan offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **S.B. 1604** as follows:

On page 1, line 12, between "areas" and "rural" strike "and" and substitute "or".

The committee amendment was read and was adopted by a viva voce vote.

Senator Truan offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend committee printing for **S.B. 1604** on page 1, lines 23-24 by deleting "~~identified by the Texas Department of Health~~" and substituting "identified by the Texas Department of Health".

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

**SENATE BILL 1604 ON THIRD READING**

Senator Truan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 1604** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE****SENATE BILL 1049 ON SECOND READING**

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1049**, Relating to the Crime Victims' Compensation Act; providing civil and administrative penalties.

The bill was read second time and was passed to engrossment by a viva voce vote.



**COMMITTEE SUBSTITUTE  
SENATE BILL 1049 ON THIRD READING**

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 1049** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1125 ON SECOND READING**

On motion of Senator Nixon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 1125**, Relating to the renewal, amendment, or modification of certain emissions permits.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1125 ON THIRD READING**

Senator Nixon moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 1125** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**SENATE BILL 170 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 170**, Relating to access to state funds for adult education.

The bill was read second time.

Senator Ellis offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **S.B. 170** as follows:

(1) In SECTION 1 of the bill, in amended Section 11.18(a)(1), Education Code (committee printing, page 1, lines 16-19), strike "by public local education agencies, public or nonprofit agencies, community-based organizations, correctional education agencies, and institutions that serve educationally disadvantaged adults" and substitute "by public local education agencies, public nonprofit agencies, or community-based organizations".

(2) In SECTION 1 of the bill, strike proposed Section 11.18(a)(5), Education Code (committee printing, page 1, lines 33-35).

(3) In SECTION 1 of the bill, in amended Section 11.18(c), Education Code (committee printing, page 1, lines 59-63), strike "by public school districts, public junior colleges, ~~[and] public universities, public or private nonprofit agencies, community-based organizations, correctional education agencies, and institutions that serve educationally disadvantaged adults~~" and substitute "by public school districts, public junior colleges, ~~[and] public universities, public nonprofit agencies, and community-based organizations~~".

(4) In SECTION 1 of the bill, in amended Section 11.18(e), Education Code (committee printing, page 2, lines 16-21), strike "~~The Central Education Agency shall ensure that public local education agencies, public or private nonprofit agencies, community-based organizations, correctional education agencies, and institutions that serve educationally disadvantaged adults have direct and equitable access to these funds.~~" and substitute "The Central Education Agency shall ensure that public local education agencies, public nonprofit agencies, and community-based organizations have direct and equitable access to those funds."

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

#### RECORD OF VOTE

Senator Moncrief asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

#### SENATE BILL 170 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that S.B. 170 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Moncrief.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

#### GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate a delegation of citizens from Starr County.

The Senate welcomed its guests.

#### COMMITTEE SUBSTITUTE

#### SENATE JOINT RESOLUTION 43 ON SECOND READING

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.J.R. 43**, Proposing a constitutional amendment relating to garnishment of wages for court-ordered restitution in a criminal judgment and court-ordered reimbursement to the state for compensation to victims of crimes.

The resolution was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE JOINT RESOLUTION 43 ON THIRD READING**

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.J.R. 43** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
SENATE BILL 866 ON SECOND READING**

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 866**, Relating to the payment of restitution to victims of crime or reimbursement of the compensation to victims of crime fund and to the garnishment of wages for restitution and reimbursement; providing civil penalties.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE  
SENATE BILL 866 ON THIRD READING**

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 866** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**HOUSE BILL 736 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**H.B. 736**, Relating to the declination of remuneration by elected or appointed state officers.

The bill was read second time and was passed to third reading by a viva voce vote.

**HOUSE BILL 736 ON THIRD READING**

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 736** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**(President in Chair)**

**SENATE JOINT RESOLUTION 51 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.J.R. 51**, Proposing a constitutional amendment consolidating general obligation bonding authority for certain agricultural funds.

The resolution was read second time and was passed to engrossment by a viva voce vote.

**SENATE JOINT RESOLUTION 51 ON THIRD READING**

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.J.R. 51** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 1260 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1260**, Relating to the consolidation of the general obligation bonding authority for the farm and ranch finance program fund with the general obligation bonding authority for the Texas agricultural fund and the rural microenterprise development fund within the Texas Agricultural Finance Authority.

The bill was read second time.

Senator Montford offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **S.B. 1260** as follows:

1) On page 10, between lines 4 and 5, add a new subsection (I) to read as follows:

(i) The board may use money in the fund to pay the reasonable and necessary costs and expenses of administering the program.

2) On page 10, lines 23 and 24, following "ranch" strike through "administrative expense" and insert "finance program".

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

#### **SENATE BILL 1260 ON THIRD READING**

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 1260** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

#### **SENATE JOINT RESOLUTION 26 ON THIRD READING**

Senator Ellis moved that the regular order of business be suspended and that **S.J.R. 26** be placed on its third reading and final passage.

**S.J.R. 26**, Proposing a constitutional amendment providing for the appointment of appellate justices and judges by the governor with retention elections on a nonpartisan ballot for those justices and judges, for the nonpartisan election and retention or rejection of district judges, for the election of certain district judges from commissioners court precincts, and for the alteration of the terms of certain judicial offices.

The motion prevailed by the following vote: Yeas 22, Nays 9.

Yeas: Armbrister, Barrientos, Bivins, Cain, Ellis, Galloway, Haywood, Lucio, Luna, Madla, Moncrief, Montford, Nixon, Patterson, Ratliff, Rosson, Sibley, Sims, Truan, Turner, West, Zaffirini.

Nays: Brown, Gallegos, Harris, Henderson, Leedom, Nelson, Shapiro, Wentworth, Whitmire.

The resolution was read third time and was passed by the following vote: Yeas 22, Nays 9. (Same as previous roll call)

(Senator Cain in Chair)

(President in Chair)

#### **SENATE BILL 1644 ON SECOND READING**

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 1644**, Relating to the regulation of changes of long distance carriers; providing a penalty.

The bill was read second time.

Senator Henderson offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **S.B. 1644**, on page 1, line 9, by striking Section 3.308(a), Subtitle G, Title III, Public Utility Regulatory Act of 1995, and substitute the following in lieu thereof:

(a) If a telecommunications provider is required by the rules and regulations of the Federal Communications Commission to obtain a written authorization from a subscriber to initiate a primary long distance carrier change, a provider must obtain from the subscriber a written letter of agency that conforms to this section. A written letter of agency that does not conform to this section is not valid.

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

**SENATE BILL 1644 ON THIRD READING**

Senator Henderson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 1644** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**SENATE BILL 959 WITH HOUSE AMENDMENTS**

Senator Harris called **S.B. 959** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

**Committee Amendment No. 1**

Amend **S.B. 959** as follows:

(1) On page 68, strike line 7 and substitute "(d) Appointments shall be made".

(2) On page 70, lines 4-5, strike "residents of this state" and substitute "citizens".

(3) On page 162, line 14, between "F," and "Government Code", insert "Chapter 2306,".

(4) On page 219, line 27, between "D." and "G.", insert "E.".

(5) On page 220, line 8, between "(2)" and "Chapter 551, Government Code", insert the following:

"a proceeding, hearing, judicial review, or enforcement of a commission order, decision, or rule is governed by Subchapters A and B, Chapter 2002, Government Code, excluding Sections 2002.001(2) and 2002.023;

(3)".

(6) On page 220, line 18, strike "(3)" and substitute "(4) [(3)]".

(7) On page 221, line 8, between "REPEALER." and "Chapter", insert "(a)".

(8) On page 221, between lines 10 and 11, insert:

"(b) Section 26.01, Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991 (Article 4348f, Vernon's Texas Civil Statutes), is repealed."

(9) On page 449, line 8, between "1964" and "(42 U.S.C.", insert "and its subsequent amendments".

(10) On page 449, line 10, between "identify" and "an authority", insert "and create".

(11) On page 449, lines 13-14, between "1990" and "(42 U.S.C.", insert "and its subsequent amendments".

(12) On page 450, line 27, strike ". The" and substitute ", except that the [—The]".

(13) On page 451, line 20, strike "employees" and substitute "individuals employed [employees]".

(14) On page 453, line 2, strike "any person" and substitute "individuals or state, local, or other agencies, public or private [any person]".

(15) On page 453, strike line 4 and substitute the following:

"(2) receive, investigate, seek to conciliate, and pass [rule] on".

(16) On page 453, line 6, strike "carry out" and substitute "effectuate [carry out]".

(17) On page 454, line 10, strike "a person" and substitute "an individual".

(18) On page 454, lines 12-13, between "Act" and "(21 U.S.C.", insert "and their subsequent amendments".

(19) On page 455, line 15, between "adopt" and "an alternative", insert "such".

(20) On page 455, line 19, between "1967" and "(29 U.S.C.", insert "and its subsequent amendments".

(21) On page 456, line 18, between "NATIONAL ORIGIN," and "OR DISABILITY", insert "RELIGION, AGE,".

(22) On page 456, line 20, strike "if" and substitute "when".

(23) On page 459, line 20, strike "that alleges" and substitute "alleging".

(24) On page 459, line 26, strike "before the 181st day after the date" and substitute "within 180 days".

(25) On page 461, line 13, between "may" and "award", insert ", as provided by this section,".

(26) On page 462, lines 5-6, strike "at least 15 but not more than 100 employees" and substitute "more than 14 and fewer than 101 employees".

(27) On page 462, lines 7-8, strike "at least 101 but not more than 200 employees" and substitute "more than 100 and fewer than 201 employees".

(28) On page 462, lines 9-10, strike "at least 201 but not more than 500 employees" and substitute "more than 200 and fewer than 501 employees".

(29) On page 462, lines 11-12, strike "at least 501 employees" and substitute "more than 500 employees".

(30) On page 462, line 14, between "the" and "employees must", insert "requisite number of".

(31) On page 462, line 20, between "fees in" and "a proceeding", insert "an action or".

(32) On page 462, line 21, between "the court" and "may include", insert ", in its discretion,".

(33) On page 463, line 6, strike "DAMAGES" and substitute "SEVERABILITY".

(34) On page 463, line 6, before "(a)", insert the following new Subsection (a):

(a) If any clause, sentence, subsection, section, or other provision of this chapter or the application of such a provision to any person or circumstances is held invalid or unconstitutional, that invalidity shall not affect the other clauses, sentences, subsections, sections, or provisions or applications of this chapter that may be given effect without the invalid clause, sentence, subsection, section, or provision or application and shall not affect, invalidate, impair, or nullify the remainder of this chapter. The effect of the determination of invalidity shall be confined to the clause, sentence, subsection, section, or provision or application so adjudicated to be invalid or unconstitutional, and to that end the provisions of this chapter are declared to be severable.

(35) On page 463, line 6, strike "(a) If a limit" and substitute "(b) If any limit".

(36) On page 463, line 8, strike "the legislature" and substitute "legislative means".

(37) On page 463, line 12, strike "(b)" and substitute "(c)".

(38) On page 463, line 13, strike "the legislature" and substitute "legislative means".

(39) On page 463, line 14, strike "Subsection (a)" and substitute "Subsection (b)".

(40) On page 463, line 15, strike "the legislature" and substitute "legislative means".

(41) On page 463, line 17, strike "In a" and substitute "In any".

(42) On page 463, line 18, between "this chapter" and the comma, insert "or Chapter 461, Government Code".

(43) On page 463, line 19, between "this chapter" and the comma, insert "or Chapter 461, Government Code".

(44) On page 463, line 25, between "this chapter" and "or a commission rule", insert "or Chapter 461, Government Code,".

(45) On page 463, line 26, between "chapter" and "may not be enforced" insert "or Chapter 461, Government Code,".

(46) On page 464, line 3, between "state law," and "only", insert "including this chapter,".

(47) On page 464, line 5, between "fees in" and "a declaratory", insert "such".

(48) On page 549, between lines 24 and 25, insert the following:

SECTION 10.031. Article 6701d-26, Revised Statutes, is repealed.

(49) On page 845, strike lines 21 through 22 and substitute the following:



"(8) the director of the Texas Department of [State Engineer-Director for Highways and Public] Transportation;".

(50) On page 895, line 22, between "Coal" and "includes", insert "means all forms of coal and".

(51) On page 896, line 3, strike "30 U.S.C. Section 1201 et seq. (1977)" and substitute "(30 U.S.C. Section 1201 et seq.)".

(52) On page 896, line 16, strike "in one year" and substitute "within 12 consecutive months".

(53) On page 896, line 20, between "coal" and the period, insert "and those minerals that occur naturally in liquid or gaseous form".

(54) On page 896, line 26, between "application" and the period, insert ", which area of land must be covered by an operator's bond as required by Subchapter F and readily identifiable by appropriate markers on the site".

(55) On page 896, between lines 26 and 27, insert the following:

(13) "Permit holder" means a person holding a permit to conduct surface coal mining and reclamation operations or underground mining activities under this chapter.

(14) "Person" means an individual, partnership, society, joint-stock company, firm, company, corporation, business organization, governmental agency, or any organization or association of citizens.

(56) On page 897, strike lines 16-20.

(57) On page 898, strike lines 5-27, and on page 899, strike lines 1-7, and substitute the following:

mine, including excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site; excluding the extraction of coal incidental to the extraction of other minerals where the coal does not exceed 16-2/3 percent of the total tonnage of coal and other minerals removed annually for purposes of commercial use or sale or coal explorations subject to this chapter; and

(B) the areas on which those activities occur or where those activities disturb the natural land surface, areas adjacent to land the use of which is incidental to any of those activities, all land affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas on which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to those activities.

(20) "Unwarranted failure to comply" means the failure of a permit holder to prevent the occurrence of any violation of the permit holder's permit or any requirement of this chapter due to indifference, lack

of diligence, or lack of reasonable care, or the failure to abate any violation of the permit holder's permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

(58) On pages 896-898, renumber the subdivisions of Section 134.004, Natural Resources Code, to conform to the changes made by this amendment.

(59) On page 899, line 13, after the semicolon, add "and".

(60) On page 899, line 16, strike the semicolon and "or" and substitute a period.

(61) On page 899, strike lines 17-20.

(62) On page 900, line 16, strike "The" and substitute "To accomplish the purposes of this chapter, the".

(63) On page 900, line 18, between "adopt" and "and", insert ", amend,".

(64) On page 900, line 22, between "chapter" and the semicolon, insert "and Chapter 2001, Government Code".

(65) On page 900, between lines 25 and 26, insert the following:

(5) issue orders modifying previous orders;

(66) Between page 901, line 27, and page 902, line 1, insert the following:

(14) take the actions necessary to establish exclusive jurisdiction over surface coal mining and reclamation in Texas under the provisions of the federal Act, including, if the federal agency disapproves Texas' program as submitted, making recommendations for remedial legislation to clarify, alter, or amend the program to meet the terms of the federal Act;

(67) On pages 900-902, renumber the subdivisions of Section 134.011, Natural Resources Code, to conform to the changes made by this amendment.

(68) On page 903, between lines 13 and 14, insert the following:

(b) The process of making and amending rules and issuing permits is subject to Chapter 2001, Government Code.

(69) On page 903, line 14, strike "(b)" and substitute "(c)".

(70) On page 904, line 2, between "for" and "excavations", insert "reclamation of".

(71) On page 904, line 3, strike "removing" and substitute "removal of".

(72) On page 910, line 3, strike "may".

(73) On page 910, line 5, between the comma and "enter", insert "has the right to".

(74) On page 910, line 10, between the comma and "have", insert "may".

(75) On page 913, line 16, between "which" and "individual", insert "it is anticipated that".

(76) On page 913, line 17, strike "likely".

(77) On page 915, line 6, strike "affecting the land again" and substitute "reaffecting the land".

(78) On page 919, line 7, between "probable" and "consequences", insert "hydrologic".

(79) On page 920, lines 24 and 25, strike "is not required until" and substitute "may not be required until the time that".

(80) On page 921, strike lines 15 and 16 and renumber the subsequent sections of Subchapter D, Chapter 134, Natural Resources Code, and cross-references to those sections accordingly.

(81) On page 923, line 13, strike "site" and substitute "surface coal mining operation".

(82) On page 924, line 16, between "reclamation" and "permit" insert "operation".

(83) On page 934, line 19, strike "affecting the land again through future" and substitute "re-affecting the land in the future through".

(84) On page 935, line 6, strike "involved" and substitute "involve".

(85) On page 945, line 15, strike "OTHER" and substitute "UNDERGROUND".

(86) On page 957, line 11, strike "initial".

(87) On page 965, line 7, strike "may" and substitute "is entitled to".

(88) On page 965, line 11, strike "reclamation" and substitute "restoration, reclamation, abatement, control, or prevention of those adverse effects".

(89) On page 965, line 13, strike "may" and substitute "is entitled to".

(90) On page 965, lines 15 and 16, strike "reclaim the property" and substitute "restore, reclaim, abate, control, or prevent the adverse effects".

(91) On page 965, lines 21 and 22, strike "reclaim the land or water resources" and substitute "restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices".

(92) On page 965, line 24, strike "reclaim the land or water resources" and substitute "restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices".

(93) On page 965, line 27, and page 966, line 1, strike "reclaim the land or water resources" and substitute "restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices".

(94) On page 966, line 19, strike "reclamation" and substitute "restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices".

(95) On page 966, line 27, strike "reclamation" and substitute "restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices".

(96) On page 967, line 27, strike "reclamation" and substitute "restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices".

(97) On page 968, line 2, strike "reclaim" and substitute "restore, reclaim, abate, control, or prevent the adverse effects of past mining practices on".

(98) On page 968, line 8, strike "reclamation" and substitute "restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices".

(99) On page 968, line 13, strike "reclamation" and substitute "restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices".

(100) On page 968, line 27, strike "reclamation of" and substitute "restoration, reclamation, abatement, control, or prevention of the adverse effects of coal mining practices on".

(101) On page 969, line 5, strike "abate the emergency by reclamation" and substitute "restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices".

(102) On page 969, line 8, strike "abate the emergency by reclamation" and substitute "restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices".

(103) On page 971, strike line 27, and on page 972, strike lines 1 and 2, and substitute the following:

(A) caused by the unwarranted failure of the permit holder to comply with this chapter or the permit conditions; or

(104) On page 976, line 15, strike "violates or does not" and substitute "violates, fails, or refuses to".

(105) On page 984, between lines 2 and 3, insert the following:

(b) The Texas Surface Coal Mining and Reclamation Act (Article 5920-11, Vernon's Texas Civil Statutes) is repealed, except that Sections 11(b), (c), and (d) of that Act are saved from repeal.

(c) If any provision of Chapter 134, Natural Resources Code, as added by this Act, is disapproved by the administrative agency of the United States under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. Section 1201 et seq.) having the authority to disapprove amendments to the Texas surface coal mining and reclamation program because of a change made by this Act, the provision of the former Texas Surface Coal Mining and Reclamation Act (Article 5920-11, Vernon's Texas Civil Statutes) from which the disapproved provision was derived is continued in effect for the purposes of that provision. This subsection expires September 1, 1997.

## Floor Amendment No. 2

Amend S.B. 959 as follows:

(1) On page 70, between "ORGANIZATIONS" and "FOR", insert "IN GENERAL; ELIGIBILITY OF FEDERATIONS AND FUNDS".

(2) On page 106, line 3, strike "governmental entity" and substitute "political subdivision".

(3) On page 106, strike line 27, and on page 107, strike lines 1-3, and substitute:

(a) Except as provided by Subsection (b), a [A] payment by a governmental entity under a contract executed on or after September 1, 1987, is overdue on the

(4) On page 107, line 12, strike "governmental entity" and substitute "political subdivision".

(5) On page 107, strike lines 16-19.

(6) On page 107, line 20, strike "(d)" and substitute "(c)".

The amendments were read.

Senator Harris moved to concur in the House amendments to S.B. 959.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1863 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**C.S.H.B. 1863**, Relating to the provision of services and other assistance to needy people, including health and human services and assistance in becoming self-dependent.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **C.S.H.B. 1863** as follows:

(1) Strike SECTION 1.04 of the bill (senate committee report, page 2, lines 40-53) and substitute the following:

**SECTION 1.04. RESOURCE LIMITS FOR AFDC RECIPIENTS.** Section 31.032, Human Resources Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) In determining whether an applicant is eligible for assistance, the department shall exclude from the applicant's available resources:

(1) \$2,000 for the applicant's household or \$3,000 if there is a person with a disability or a person who is at least 60 years of age in the applicant's household; and

(2) the fair market value of the applicant's ownership interest in a motor vehicle, but not more than the amount determined according to the following schedule:

(A) \$4,550 on or after September 1, 1995, but before October 1, 1995;

(B) \$4,600 on or after October 1, 1995, but before October 1, 1996;

(C) \$5,000 on or after October 1, 1996, but before October 1, 1997; and

(D) \$5,000 plus or minus an amount to be determined annually beginning on October 1, 1997, to reflect changes in the new car component of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

(e) If federal regulations governing the maximum allowable resources under the food stamp program, 7 CFR Part 273, are revised, the department shall adjust the standards that determine available resources under Subsection (d) to reflect those revisions.

(2) In SECTION 1.10 of the bill, in proposed Subsection (a) (senate committee report, page 5, line 52), insert "Part F," between "(JOBS) under" and "Subchapter IV, Social Security Act".

(3) In SECTION 1.10 of the bill, strike proposed Subsection (c) (senate committee report, page 5, lines 64-69) and substitute the following:

(c) The agency shall report to the governor regarding the effectiveness of this program. The agency shall notify members of the legislature and the standing committees of the senate and house of representatives having primary jurisdiction over the agency of the filing of the report.

(4) In SECTION 1.11 of the bill, strike proposed Subsection (c) (senate committee report, page 6, lines 15-21) and substitute the following:

(c) The department shall report to the governor regarding the program's success in assisting families in becoming more self-sufficient. The department shall notify members of the 75th and 76th legislatures and the standing committees of the senate and house of representatives having primary jurisdiction over the department of the filing of the report.

(5) In SECTION 2.05 of the bill, strike Section 22(b), Article 4413(502), Revised Statutes, as added by the bill (senate committee report, page 8, lines 3-9), and substitute the following:

(b) The commission shall organize a planning group involving the Texas Department of Human Services, the Central Education Agency, and the Texas Rehabilitation Commission to:

(1) improve workload coordination between those agencies as necessary to administer this section; and

(2) provide information and help train employees to correctly screen applicants under this section as requested by the commission.

(6) Strike SECTION 2.08 of the bill (senate committee report, page 9, lines 17-43) and substitute the following:

SECTION 2.08. PILOT PROGRAM: EMERGENCY ASSISTANCE FOR NON-AFDC FAMILIES IN A CRISIS. (a) The Texas Department of Human Services shall seek federal funding that would allow the department to establish an emergency assistance pilot program to support families who are not receiving financial assistance under Chapter 31, Human Resources Code, who are in a crisis, and who would otherwise be eligible for financial assistance.

(b) The department shall establish the pilot program in a high-employment area of the state or an area that uses the electronic benefits transfer system.

(c) The department by rule shall develop guidelines to administer the program, including:

(1) eligibility guidelines;

(2) guidelines specifying whether the assistance is a one-time cash payment to a family, provided that the assistance may not be provided more than twice in one year unless the department has developed other appropriate limitations; and

(3) guidelines specifying whether an applicant who receives the emergency assistance must agree to forgo applying for financial assistance under Chapter 31, Human Resources Code, for one year, or another appropriate limitation determined by the department.

(d) The department shall report to the governor regarding the program's success in helping families in a crisis avoid becoming AFDC clients. The department shall notify members of the 75th and 76th legislatures and the standing committees of the senate and house of

representatives having primary jurisdiction over the department of the filing of the report.

(e) This section expires September 1, 1999.

(7) Strike SECTION 4.03 of the bill (senate committee report, page 14, lines 39-70, and page 15, lines 1-3) and substitute the following:

SECTION 4.03. FEDERAL FUNDS; SUBSTITUTE CARE. (a) Article 4413(503), Revised Statutes, is amended by adding Section 12A to read as follows:

Sec. 12A. FEDERAL FUNDING FOR CERTAIN CHILDREN. (a) For purposes of Medicaid eligibility only, the department shall classify as a "child in substitute care" each child who is in the conservatorship of the state and placed in the home of a relative. A child classified as a "child in substitute care" under this subsection is not automatically eligible to receive foster care payments because of that classification.

(b) The department shall ensure that each time study used to allocate costs identifies all costs incurred on behalf of a child if the child's case plan clearly indicates that substitute care is the planned arrangement for that child.

(c) The department shall claim federal financial participation under Title IV-E, Social Security Act (42 U.S.C. Section 670 et seq.), for all nonrecurring adoption expenses at the highest rate authorized by federal law. The department shall include all charges from state attorneys and state courts and any applicable overhead. The department may claim the expenses as either administrative or training expenses, depending on which classification results in a higher federal match.

(b) The Department of Protective and Regulatory Services shall file an adjustment to its previous quarterly claims under Title IV-E, Social Security Act (42 U.S.C. Section 670 et seq.), to claim retroactive federal financial participation for the incremental difference for each quarter in which nonrecurring adoption expenses have been identified as a legitimate expense.

(c) The department shall request a waiver from the federal two-year limitation on the period in which the state can file certain claims in accordance with Section 1132(b), Social Security Act (42 U.S.C. Section 1320b-2(b)). If the waiver is denied, the department shall exhaust all administrative remedies and, if necessary, seek judicial review to obtain a court order reducing the claim to judgment and mandating retroactive payment.

The amendment was read and was adopted by a viva voce vote.

Senator Harris offered the following amendment to the bill:

#### **Floor Amendment No. 2**

Amend **C.S.H.B. 1863** by adding a new section, appropriately numbered, to read as follows:

SECTION \_\_\_\_ Subtitle D, Title 5, Family Code, as added by **H.B. 655**, Acts of the 74th Legislature, Regular Session, 1995, is amended by adding Chapter 232 to read as follows:

CHAPTER 232. SUSPENSION OF LICENSE FOR FAILURE  
TO PAY CHILD SUPPORT

Sec. 232.001. DEFINITIONS. In this chapter:

(1) "License" means a license, certificate, registration, permit or other authorization that:

(A) is issued by a licensing authority;

(B) is subject before expiration to suspension, revocation, forfeiture or termination by the issuing licensing authority; and

(C) a person must obtain to:

(i) practice or engage in a particular business, occupation or profession;

(ii) operate a motor vehicle; or

(iii) engage in any other regulated activity including hunting, fishing or other recreational activity for which a license or permit is required.

(2) "Licensing authority" means a department, commission, board, office, or other agency of the state or of a political subdivision of the state that issues a license.

(3) "Order suspending license" means an order issued by the Title IV-D agency or a court directing a licensing authority to suspend a license.

Sec. 14.602. LICENSING AUTHORITIES SUBJECT TO  
SUBCHAPTER. The following state agencies are licensing authorities subject to this subchapter:

(1) Department of Agriculture;

(2) Texas Commission on Alcohol and Drug Abuse;

(3) Texas Alcoholic Beverage Commission;

(4) Texas Appraiser Licensing and Certification Board;

(5) Texas Board of Architectural Examiners;

(6) State Board of Barber Examiners;

(7) Texas Board of Chiropractic Examiners;

(8) Comptroller of Public Accounts;

(9) Texas Cosmetology Commission;

(10) Court Reporters Certification Board;

(11) State Board of Dental Examiners, if the 74th Legislature, at its regular session, enacts legislation that becomes law authorizing a state agency to regulate the practice of dentistry;

(12) Texas State Board of Examiners of Dietitians;

(13) Texas Funeral Service Commission;

(14) Texas Department of Health;

(15) Texas Board of Professional Land Surveying;

(16) Texas Department of Licensing and Regulation;

(17) Texas State Board of Examiners of Marriage and Family Therapists;

(18) Texas State Board of Medical Examiners;

(19) Midwifery Board;

(20) Texas Natural Resource Conservation Commission;

(21) Board of Nurse Examiners;



- (22) Texas Board of Nursing Facility Administrators;
- (23) Texas Board of Occupational Therapy Examiners;
- (24) Texas Optometry Board;
- (25) Parks and Wildlife Department;
- (26) Texas State Board of Examiners of Perfusionists;
- (27) Texas State Board of Pharmacy;
- (28) Texas Board of Physical Therapy Examiners;
- (29) Texas State Board of Plumbing Examiners;
- (30) Texas State Board of Podiatry Examiners;
- (31) Polygraph Examiners Board;
- (32) Texas Board of Private Investigators and Private Security Agencies;
- (33) Texas State Board of Examiners of Professional Counselors;
- (34) State Board of Registration for Professional Engineers;
- (35) Department of Protective and Regulatory Services;
- (36) Texas State Board of Examiners of Psychologists;
- (37) Texas State Board of Public Accountancy;
- (38) Department of Public Safety of the State of Texas;
- (39) Public Utility Commission of Texas;
- (40) Railroad Commission of Texas;
- (41) Texas Real Estate Commission;
- (42) State Bar of Texas;
- (43) Texas State Board of Social Worker Examiners;
- (44) State Board of Examiners for Speech-Language Pathology and Audiology;
- (45) Texas Structural Pest Control Board;
- (46) Board of Tax Professional Examiners;
- (47) Secretary of State;
- (48) Supreme Court of Texas;
- (49) Texas Transportation Commission;
- (50) State Board of Veterinary Medical Examiners;
- (51) Board of Vocational Nurse Examiners;
- (52) Texas Ethics Commission;
- (53) Advisory Board of Athletic Trainers;
- (54) State Committee of Examiners on the Fitting and Dispensing of Hearing Instruments;
- (55) Texas Board of Licensure for Professional Medical Physicists;
- and
- (56) Texas Department of Insurance.

Sec. 232.003. SUSPENSION OF LICENSE. A court or the Title IV-D agency shall issue an order suspending license as provided by this chapter if an obligor:

- (1) has an arrearage equal to or greater than the total support due for 90 days under a support order;
- (2) has been provided an opportunity to make payments toward the child support arrearage under an agreed or court-ordered repayment schedule; and

(3) has failed to comply with the repayment schedule.

Sec. 232.004. PETITION FOR SUSPENSION OF LICENSE. (a) A child support agency or obligee may file a petition to suspend a license.

(b) In a Title IV-D case, the petition shall be filed with the Title IV-D agency.

(c) In a case other than a Title IV-D case, the petition shall be filed in the court of continuing jurisdiction or the court in which a child support order has been registered under Chapter 159.

(d) A proceeding in a case filed with the Title IV-D agency under this chapter is governed by the contested case provisions in Chapter 2001, Government Code, except that Section 2001.054 does not apply to the proceeding. The director of the Title IV-D agency is responsible for rendering a final decision the contested case proceeding.

Sec. 232.005. CONTENTS OF PETITION. (a) A petition under this chapter must state that license suspension is required under Section 232.003 and allege:

(1) the name and, if known, social security number of the obligor;

(2) the type of license the obligor is believed to hold and the name of the licensing authority; and

(3) the amount owed under the child support order, the amount of support paid, and the amount of arrearages.

(b) A petition under this chapter may include as an attachment a copy of the record of child support payments maintained by the Title IV-D registry or local registry.

Sec. 232.006. NOTICE. (a) On the filing of a petition under Section 232.004, the court or Title IV-D agency shall issue to the obligor:

(1) notice of the obligor's right to a hearing before the court or agency;

(2) notice of the deadline for requesting a hearing; and

(3) a hearing request form if the proceeding is in a Title IV-D case.

(b) Notice under this section may be served as in civil cases generally.

(c) The notice must state that an order suspending license shall be rendered on the 60th day after the date of service of the notice unless by that date:

(1) the court or Title IV-D agency receives proof that all arrearages and the current month's child support obligation have been paid;

(2) the child support agency or obligee files a certification that the obligor is in compliance with a reasonable repayment schedule; or

(3) the obligor appears at a hearing before the court or Title IV-D agency and shows that the request for suspension should be denied or stayed.

Sec. 232.007. HEARING ON PETITION TO SUSPEND LICENSE.

(a) A request for a hearing and motion to stay suspension must be filed with the court or Title IV-D agency by the obligor not later than the 20th day after the date of service of the notice under Section 232.006.

(b) If a request for a hearing is filed, the court or Title IV-D agency shall:

- (1) promptly schedule a hearing;
- (2) notify each party of the date, time, and location of the hearing; and
- (3) stay suspension pending the hearing.

(c) A record of child support payments made by the Title IV-D agency or a local registry is evidence of whether the payments were made. A copy of the record appearing regular on its face shall be admitted as evidence at a hearing under this chapter, including a hearing on a motion to revoke a stay. Either party may offer controverting evidence.

Sec. 232.008. ORDER SUSPENDING LICENSE. (a) On making the findings required by Section 232.003, the court or Title IV-D agency shall render an order suspending the license unless the obligor proves that all arrearages and the current month's support have been paid.

(b) The court or Title IV-D agency may stay an order suspending a license conditioned on the obligor's compliance with a reasonable repayment schedule that is incorporated in the order. An order suspending license with a stay of suspension may not be served on the licensing authority unless the stay is revoked as provided in this chapter.

(c) A final order suspending license rendered by a court or the Title IV-D agency shall be forwarded to the appropriate licensing authority.

(d) If the court or Title IV-D agency renders an order suspending license, the obligor may also be ordered not to engage in the licensed activity.

(e) If the court or Title IV-D agency finds that the petition for suspension should be denied, the petition shall be dismissed without prejudice, and an order suspending license may not be rendered.

Sec. 232.009. DEFAULT ORDER. The court or Title IV-D agency shall consider the allegations of the petition for suspension to be admitted and shall render an order suspending license if the obligor fails to:

- (1) respond to a notice issued under Section 232.006;
- (2) request a hearing; or
- (3) appear at a hearing.

Sec. 232.010. REVIEW OF FINAL ADMINISTRATIVE ORDER. An order issued by a Title IV-D agency under this chapter is a final agency decision and is subject to review under the substantial evidence rule as provided by Chapter 2001, Government Code.

Sec. 232.011. ACTION BY LICENSING AUTHORITY. (a) On receipt of a final order suspending license, the licensing authority shall immediately determine if the authority has issued a license to the obligor named on the order and, if a license has been issued:

- (1) record the suspension of the license in the licensing authority's records;
- (2) report the suspension as appropriate; and
- (3) demand surrender of the suspended license if required by law for other cases in which a license is suspended.

(b) A licensing authority shall implement the terms of a final order suspending license without additional review or hearing. The authority

may provide notice as appropriate to the license holder or to others concerned with the license.

(c) A licensing authority may not modify, remand, reverse, vacate, or stay an order suspending license issued under this chapter and may not review, vacate, or reconsider the terms of a final order suspending license.

(d) An obligor who is the subject of a final order suspending license is not entitled to a refund for any fee or deposit paid to the licensing authority.

(e) An obligor who continues to engage in the business, occupation, profession, or other licensed activity after the implementation of the order suspending license by the licensing authority is liable for the same civil and criminal penalties provided for engaging in the licensed activity without a license or while a license is suspended as any other license holder of that licensing authority.

(f) A licensing authority is exempt from liability to a license holder for any act authorized under this chapter performed by the authority.

(g) Except as provided by this chapter, an order suspending license or dismissing a petition for the suspension of a license does not affect the power of a licensing authority to grant, deny, suspend, revoke, terminate, or renew a license.

(h) The denial or suspension of a driver's license under this chapter is governed by this chapter and not by the general licensing provisions of Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, (Article 6687b, Vernon's Texas Civil Statutes).

Sec. 232.012. MOTION TO REVOKE STAY. (a) The obligee, support enforcement agency, court, or Title IV-D agency may file a motion to revoke the stay of an order suspending license if the obligor does not comply with the terms of a reasonable repayment plan entered into by the obligor.

(b) Notice to the obligor of a motion to revoke stay under this section may be given by personal service or by mail to the address provided by the obligor, if any, in the order suspending license. The notice must include a notice of hearing. The notice must be provided to the obligor not less than 10 days before the date of the hearing.

(c) A motion to revoke stay must allege the manner in which the obligor failed to comply with the repayment plan.

(d) If the court or Title IV-D agency finds that the obligor is not in compliance with the terms of the repayment plan, the court or agency shall revoke the stay of the order suspending license and render a final order suspending license.

Sec. 232.013. VACATING OR STAYING ORDER SUSPENDING LICENSE. (a) The court or Title IV-D agency may render an order vacating or staying an order suspending license if the obligor has paid all delinquent child support or has established a satisfactory payment record.

(b) The court or Title IV-D agency shall promptly deliver an order vacating or staying an order suspending license to the appropriate licensing authority.

(c) On receipt of an order vacating or staying an order suspending license, the licensing authority shall promptly issue the affected license to the obligor if the obligor is otherwise qualified for the license.

(d) An order rendered under this section does not affect the right of the child support agency or obligee to any other remedy provided by law, including the right to seek relief under this chapter. An order rendered under this section does not affect the power of a licensing authority to grant, deny, suspend, revoke, terminate, or renew a license as otherwise provided by law.

Sec. 232.014. FEE BY LICENSING AUTHORITY. A licensing authority may charge a fee to an obligor who is the subject of an order suspending license in an amount sufficient to recover the administrative costs incurred by the authority under this chapter.

Sec. 232.015. COOPERATION BETWEEN LICENSING AUTHORITIES AND TITLE IV-D AGENCY. (a) The Title IV-D agency may request from each licensing authority the name, address, social security number, license renewal date, and other identifying information for each individual who holds, applies for, or renews a license issued by the authority.

(b) A licensing authority shall provide the requested information in the manner agreed to by the Title IV-D agency and the licensing authority.

(c) The Title IV-D agency may enter into a cooperative agreement with a licensing authority to administer this subchapter in a cost-effective manner.

(d) The Title IV-D agency may adopt a reasonable implementation schedule for the requirements of this section.

(e) The Title IV-D agency, the Comptroller and the Texas Alcoholic Beverage Commission shall by rule specify additional prerequisites for the suspension of licenses relating to state taxes collected under Title 2 of the Tax Code. Such joint rules shall be promulgated not later than March 1, 1996.

Sec. 232.016. RULES, FORMS, AND PROCEDURES. The Title IV-D agency by rule shall prescribe forms and procedures for the implementation of this chapter.

The amendment was read and was adopted by a viva voce vote.

(Senator Truan in Chair)

Senator Harris offered the following amendment to the bill:

### Floor Amendment No. 3

Amend C.S.H.B. 1863 as follows:

(1) Insert the following sections as Sections 1 and 2 of the bill.

SECTION 1. (a) It is the intent of the legislature in this Act to provide spousal maintenance primarily as a temporary rehabilitative measure for a divorced spouse whose ability for self-support is lacking or has deteriorated through the passage of time while the spouse was engaged in homemaking activities and whose capital assets are insufficient to provide support.

(b) It is the intent of the legislature in this Act that spousal support should be terminated in the shortest reasonable time, not to exceed three years, in which the former spouse is able to be employed or to acquire the necessary skills to become self-supporting. Only in circumstances in which the former spouse cannot become self-supporting by reason of incapacitating physical or mental disability should maintenance be extended beyond this period.

SECTION 2. Chapter 3, Family Code, is amended by adding Subchapter G to read as follows:

#### SUBCHAPTER G. MAINTENANCE

Sec. 3.9601. DEFINITION. In this subchapter, "maintenance" means an award in a divorce, annulment, or suit to declare a marriage void of periodic payments from the future income of one spouse for the support of the other spouse.

Sec. 3.9602. ELIGIBILITY FOR MAINTENANCE. In a suit for divorce or annulment or in a proceeding in a court with personal jurisdiction over both former spouses following the dissolution of their marriage by a court that lacked personal jurisdiction over an absent spouse, the court may order maintenance for either spouse only if:

(1) the duration of the marriage was 10 years or longer on the date on which the suit for dissolution was commenced;

(2) the spouse seeking maintenance lacks sufficient property, including property distributed to the spouse under this code, to provide for the spouse's minimum reasonable needs, as limited by Section 3.9605; and

(3) the spouse seeking maintenance:

(A) is unable to support himself or herself through appropriate employment because of an incapacitating physical or mental disability; or

(B) clearly lacks earning ability in the labor market adequate to provide support for the spouse's minimum reasonable needs, as limited by Section 3.9605.

Sec. 3.9603. FACTORS TO DETERMINE MAINTENANCE. A court that determines that a spouse is eligible to receive maintenance under Section 3.9602 shall determine the nature, amount, duration, and manner of periodic payments by considering all relevant factors, including:

(1) the financial resources of the spouse seeking maintenance, including the community and separate property and liabilities apportioned to that spouse in the dissolution proceeding, and that spouse's ability to meet his or her needs independently;

(2) the education and employment skills of the spouses and the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to find appropriate employment, the availability of that education or training, and the feasibility of that education or training;

(3) the duration of the marriage;

(4) the age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;

(5) the ability of the spouse from whom maintenance is sought to meet that spouse's personal needs and to provide periodic child support payments, if applicable, while meeting the personal needs of the spouse seeking maintenance;

(6) acts by either spouse resulting in excessive or abnormal expenditures or destruction, concealment, or fraudulent disposition of community property, joint tenancy, or other property held in common;

(7) the comparative financial resources of the spouses, including medical, retirement, insurance, or other benefits, and the separate property of each spouse;

(8) the contribution by one spouse to the education, training, or increased earning power of the other spouse;

(9) the property brought to the marriage by either spouse;

(10) the contribution of a spouse as homemaker;

(11) any marital misconduct of the spouse seeking maintenance;

and

(12) the efforts of the spouse seeking maintenance to pursue available employment counseling as provided by Chapter 302, Labor Code.

Sec. 3.9604. PRESUMPTION. (a) Except as provided by Subsection (b), it is presumed that maintenance is not warranted unless the spouse seeking maintenance has exercised diligence in:

(1) seeking suitable employment; or

(2) developing the necessary skills to become self-supporting during any period of separation and during the pendency of the divorce suit.

(b) This section does not apply to a spouse who is not able to satisfy the presumption in Subsection (a) because of an incapacitating physical or mental disability.

Sec. 3.9605. DURATION OF MAINTENANCE ORDER. (a) Except as provided by Subsection (b), a court:

(1) may not enter a maintenance order that remains in effect for more than three years after the date of the order; and

(2) shall limit the duration of a maintenance order to the shortest reasonable period of time that allows the spouse seeking maintenance to meet the spouse's minimum reasonable needs by obtaining appropriate employment or developing an appropriate skill, unless the ability of the spouse to provide for the spouse's minimum reasonable needs through employment is substantially or totally diminished because of:

(A) physical or mental disability;

(B) duties as the custodian of an infant or young child; or

(C) another compelling impediment to gainful employment.

(b) If a spouse seeking maintenance is unable to support himself or herself through appropriate employment because of incapacitating physical or mental disability, the court may order maintenance for an indefinite period for as long as the disability continues. The court may order periodic review of its order, on the request of either party or on its own motion, to determine whether the disability is continuing. The continuation

of spousal maintenance under these circumstances is subject to a motion to modify as provided by Section 3.9608.

Sec. 3.9606. AMOUNT OF MAINTENANCE. (a) A court may not enter a maintenance order that requires a spouse to pay monthly more than the lesser of:

(1) \$2,500; or

(2) 20 percent of the spouse's average monthly gross income.

(b) The court shall set the amount that a spouse is required to pay in a maintenance order to provide for the minimum reasonable needs of the spouse receiving the maintenance under the order, considering any employment or property received in the divorce or annulment or otherwise owned by the spouse receiving the maintenance that contributes to the minimum reasonable needs of that spouse.

Sec. 3.9607. TERMINATION. (a) The obligation to pay future maintenance terminates on the death of either party or on the remarriage of the party receiving maintenance.

(b) After a hearing, the court shall terminate the maintenance order if the party receiving maintenance cohabits with another person in a permanent place of abode on a continuing, conjugal basis.

Sec. 3.9608. MODIFICATION OF MAINTENANCE ORDER. (a) The amount of maintenance specified in a court order or the portion of a decree that provides for the support of a former spouse may be reduced by the filing of a motion in the court that originally entered the order. A party affected by the order or the portion of the decree to be modified may file the motion.

(b) Notice of a motion to modify maintenance and the response, if any, are governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit. Notice must be given by service of citation, and a response must be in the form of an answer due at or before 10 a.m. of the first Monday after 20 days after the date of service. A court shall set a hearing on the motion in the manner provided by Rule 245, Texas Rules of Civil Procedure.

(c) After a hearing, the court may modify an original or modified order or portion of a decree providing for maintenance on a proper showing of a material and substantial change in circumstances of either party. The court shall apply the modification only to payments accruing after the filing of the motion to modify.

(d) A loss of employment or circumstances that render a former spouse unable to support himself or herself through appropriate employment by reason of incapacitating physical or mental disability that occurs after the divorce or annulment are not grounds for the institution of spousal maintenance for the benefit of the former spouse.

Sec. 3.9609. ENFORCEMENT OF MAINTENANCE ORDER. (a) The court may enforce by contempt its maintenance order or an agreement for the payment of maintenance voluntarily entered into between the parties and approved by the court.

(b) On the motion of a party entitled to receive maintenance payments, the court may render judgment against a defaulting party for an amount



unpaid and owing after notice by service of citation, answer, if any, and a hearing finding that the defaulting party has failed or refused to carry out the terms of the order. The judgment may be enforced by any means available for the enforcement of judgments for debts.

(c) It is an affirmative defense to an allegation of contempt of court or of the violation of a condition of probation requiring payment of court-ordered maintenance that the obligor:

(1) lacked the ability to provide maintenance in the amount ordered;

(2) lacked property that could be sold, mortgaged, or otherwise pledged to raise the funds needed;

(3) attempted unsuccessfully to borrow the needed funds; and

(4) did not know of a source from which the money could have been borrowed or otherwise legally obtained.

(d) The issue of the existence of an affirmative defense does not arise unless evidence is admitted supporting the defense. If the issue of the existence of an affirmative defense arises, an obligor must prove the affirmative defense by a preponderance of the evidence.

Sec. 3.9610. PUTATIVE SPOUSE. In a suit to declare a marriage void, a putative spouse who did not have knowledge of an existing impediment to a valid marriage may be awarded maintenance if otherwise qualified to receive maintenance under this subchapter.

Sec. 3.9611. UNMARRIED COHABITANTS. An order for maintenance is not authorized between unmarried cohabitants under any circumstances.

(2) Add the following appropriately numbered transition section of the bill to other transition provisions at the end of the bill:

SECTION \_\_\_\_ . (a) Except as provided by Subsection (b) of this section, Sections 1 and 2 of this Act take effect September 1, 1995, and apply only to an action filed on or after that date.

(b) Section 2 of this Act does not apply to an action filed on or before January 1, 1997, if a prior suit for dissolution of a marriage between the parties was nonsuited by the spouse seeking maintenance on or after January 1, 1995, and on or before August 31, 1995.

(c) An action to which Section 2 of this Act does not apply is governed by the law in effect at the time the action was filed, and that law is continued in effect only for that purpose.

(3) Renumber other sections of the bill appropriately.

The amendment was read.

#### POINT OF ORDER

Senator Bivins raised a point of order that Floor Amendment No. 3 was not germane to the body of the bill.

The Presiding Officer, Senator Truan in Chair, stated that the point of order was respectfully overruled.

Question—Shall Floor Amendment No. 3 to **C.S.H.B. 1863** be adopted?

(President in Chair)

(Senator West in Chair)

(Senator Armbrister in Chair)

Senator Moncrief offered the following amendment to Floor Amendment No. 3:

**Floor Amendment No. 3A**

Amend Floor Amendment No. 3 to **C.S.H.B. 1863** by striking Section 3.9602, Family Code, as added by the amendment, and substituting new Section 3.9602, Family Code, to read as follows:

Sec. 3.9602. **ELIGIBILITY FOR MAINTENANCE.** In a suit for divorce or annulment, to declare a marriage void, or in a proceeding for maintenance in a court with personal jurisdiction over both former spouses following the dissolution of their marriage by a court that lacked personal jurisdiction over an absent spouse, the court may order maintenance for either spouse only if:

(1) not earlier than one year before the date on which a suit for dissolution of the marriage was filed, the spouse from whom maintenance is sought was convicted of, or received deferred adjudication for, a criminal offense that also constitutes an act of family violence under Section 71.01, Family Code, and that spouse was placed under community supervision; or

(2) the duration of the marriage was 10 years or longer, the spouse seeking maintenance lacks sufficient property, including property distributed to the spouse under this code, to provide for the spouse's minimum reasonable needs, as limited by Section 3.9605, and the spouse seeking maintenance:

(A) is unable to support himself or herself through appropriate employment because of an incapacitating physical or mental disability;

(B) is the custodian of a child who requires substantial care and personal supervision because a physical or mental disability makes it necessary, taking into consideration the needs of the child, that the spouse not be employed outside the home; or

(C) clearly lacks the earning ability in the labor market adequate to provide support for the spouse's minimum reasonable needs, as limited by Section 3.9605.

The amendment to Floor Amendment No. 3 was read.

On motion of Senator Moncrief and by unanimous consent, Floor Amendment No. 3A was withdrawn.

Senator Brown offered the following amendment to Floor Amendment No. 3:

**Floor Amendment No. 3B**

Amend Floor Amendment No. 3 to **C.S.H.B. 1863** by adding on page 5 at line 25 the following:

"(c) Veterans Administration service-connected disability compensation, social security benefits and disability benefits, and workers compensation benefits will be excluded from alimony."

The amendment to Floor Amendment No. 3 was read and was adopted by the following vote: Yeas 25, Nays 6.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, Zaffirini.

Nays: Ellis, Gallegos, Moncrief, Rosson, West, Whitmire.

Senator Patterson offered the following amendment to Floor Amendment No. 3:

**Floor Amendment No. 3C**

Amend Floor Amendment No. 3 to **C.S.H.B. 1863** by adding on page 2 after line 20, the following:

(C) would without spousal maintenance, be eligible for public assistance.

The amendment to Floor Amendment No. 3 was read.

**(Senator Henderson in Chair)**

On motion of Senator Harris, Floor Amendment No. 3C was tabled by the following vote: Yeas 24, Nays 5.

Yeas: Armbrister, Barrientos, Cain, Ellis, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Ratliff, Rosson, Shapiro, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Bivins, Brown, Galloway, Nixon, Patterson.

Absent: Gallegos, Sibley.

**(President in Chair)**

Question recurring on the adoption of Floor Amendment No. 3 as amended, the amendment as amended was adopted by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Barrientos, Ellis, Gallegos, Harris, Henderson, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Ratliff, Rosson, Shapiro, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Bivins, Brown, Cain, Galloway, Haywood, Leedom, Nixon, Patterson, Sibley, Sims.

Senator Ellis offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **C.S.H.B. 1863** as follows:

(1) In the introductory language to Section 3.05 of the bill (committee printing, page 12, lines 7-8), strike "by adding Section 10B" and substitute "by adding Sections 10B and 10C".

(2) After Section 10B, Article 4413(502), Revised Statutes, as added by Section 3.05 of the bill (committee printing, page 13, between lines 3 and 4), insert the following:

Sec. 10C. FARMERS MARKET EBT PILOT PROGRAM. (a) The Texas Department of Human Services by rule shall establish an electronic benefits transfer (EBT) pilot program for farmers markets. In adopting rules under this section, the department shall:

(1) follow the recommendations of the working group created by this section; and

(2) ensure that the pilot program is designed so that:

(A) EBT technology can be used at each farmers market that currently accepts or is interested in accepting food stamps in each county included in the program; and

(B) each farmer who currently accepts food stamps at a farmers market in a county included in the program is afforded the opportunity to participate in the EBT program.

(b) The department shall select two or more counties in which to establish the pilot program. In selecting each county, the department shall follow the recommendations of the working group created by this section. The department shall also follow the recommendations of the working group in determining which technology option to test in each location so as to ensure that the working group has sufficient information to make a responsible recommendation to the department regarding appropriate permanent adoption of EBT to farmers markets.

(c) An interagency working group is created as part of the interagency task force on electronic benefits transfers created under Section 10B of this article. The working group shall advise and assist the Texas Department of Human Services in:

(1) developing an EBT pilot program for farmers markets; and

(2) selecting two or more counties in which to establish the program.

(d) The working group is composed of:

(1) a representative of:

(A) the comptroller's office, appointed by the comptroller;

(B) the Department of Agriculture, appointed by the commissioner of agriculture;

(C) the Texas Department of Human Services, appointed by the commissioner of human services;

(D) nonprofit organizations that work with farmers markets and low-income communities, appointed by the commissioner of human services; and

(E) each company with whom the department contracts for the installation and operation of the EBT system, appointed by the commissioner of human services; and

(2) a farmer who accepts food stamps at a Central Texas farmers market, appointed by the Department of Agriculture.

(e) A member of the working group serves at the will of the appointing agency.

(f) The working group shall elect a presiding officer and any other necessary officers.

(g) The working group shall meet at least quarterly and at other times as necessary at the call of the presiding officer. The working group shall hold its first meeting not earlier than September 1, 1995, and not later than December 31, 1995, at the call of the commissioner of human services.

(h) The appointing agency is responsible for the expenses of a member's service on the working group. A member of the working group receives no compensation for serving on the working group.

(i) The working group shall:

(1) establish goals for the pilot program;

(2) develop and submit to the Texas Department of Human Services recommendations on the design and implementation of the pilot program;

(3) recommend to the Texas Department of Human Services two or more counties in which to establish the program; and

(4) submit to the interagency task force on electronic benefits transfers a report on the activities of the working group.

(j) Not later than January 15, 1997, the interagency task force on electronic benefits transfers shall submit to the governor and the 75th Legislature a report concerning the effectiveness of the pilot program.

(k) The appointing agencies shall appoint the members of the working group established by this section not later than September 1, 1995. The Texas Department of Human Services shall establish the pilot program required by this section not later than January 1, 1996.

(l) This section expires September 1, 1997.

The amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

#### **Floor Amendment No. 5**

Amend C.S.H.B. 1863, Article 4, by adding Section 4.04, to read as follows:

**SECTION 4.04. FEDERAL FUNDING; PROGRAMS TO BENEFIT VICTIMS OF FAMILY VIOLENCE.** Chapter 51, Human Resources Code, is amended by adding Section 51.0051 to read as follows:

**Section 51.0051. MAXIMIZING FEDERAL FUNDING FOR PROGRAMS TO BENEFIT VICTIMS OF FAMILY VIOLENCE.** To maximize the state's receipt of federal matching funds for emergency assistance under Part A of Title IV of the federal Social Security Act (42 U.S.C. Section 601 et seq.), the department shall:

(1) ensure that a contract made under Section 51.003 includes provisions necessary to maximize federal funding for services for victims of family violence;

(2) file amendments to the state's plan for aid and services to needy families with children under Part A of Title IV of the federal Social Security Act (42 U.S.C. Section 601 et seq.) that are necessary to maximize federal funding;

(3) establish by rule any reporting procedures that federal law requires as a condition of receiving federal matching funds.

The amendment was read and was adopted by a viva voce vote.

Senator Nelson offered the following amendment to the bill:

**Floor Amendment No. 6**

Amend C.S.H.B. 1863 in Article 1 of the bill by inserting the following new section, appropriately numbered, and renumbering the subsequent sections accordingly:

SECTION \_\_\_\_ . (a) Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.0031 to read as follows:

Sec. 31.0031. DEPENDENT CHILD'S INCOME. The department may not consider any income earned by a dependent child who is attending school and whose income is derived from the child's part-time employment for purposes of determining:

(1) the amount of financial assistance granted to an individual under this chapter for the support of dependent children; or

(2) whether the family meets household income and resource requirements for eligibility for financial assistance under this chapter.

(b) This section takes effect September 1, 1995, and applies to income earned by the dependent child of an individual who receives financial assistance under Chapter 31, Human Resources Code, on or after the effective date of this section, regardless of the date on which eligibility for that assistance was determined.

The amendment was read and was adopted by a viva voce vote.

Senator Barrientos offered the following amendment to the bill:

**Floor Amendment No. 7**

Amend C.S.H.B. 1863 as follows:

In SECTION 3.06 of the bill, proposed Section 22.025, Subsection (d), Human Resources Code, after "appropriate", strike "disciplinary" and after "action," strike "including dismissal, against management and other staff"

The amendment was read and was adopted by a viva voce vote.

Senator Gallegos offered the following amendment to the bill:

**Floor Amendment No. 8**

Amend C.S.H.B. 1863 by adding a new article, appropriately numbered, to read as follows and renumbering subsequent articles accordingly:

ARTICLE \_\_\_\_ . EARLY CHILD CARE AND  
EDUCATION PROGRAMS

SECTION \_\_\_\_ .01. INTERAGENCY WORK GROUP ON EARLY CHILD CARE AND EDUCATION PROGRAMS. (a) Not later than September 1, 1995, the administrative heads of the Central Education Agency, Texas Higher Education Coordinating Board, Texas Department of

Health, Texas Department of Human Services, Department of Protective and Regulatory Services, Interagency Council on Early Childhood Intervention Services, and Texas Head Start Collaboration Project shall each designate a representative to an interagency work group on early child care and education programs.

(b) The representative of the Texas Head Start Collaboration Project shall serve as the chair.

SECTION \_\_\_\_ .02. DUTIES OF WORK GROUP. The interagency work group shall study:

(1) the quality of training programs for early childhood education workers;

(2) the need for, design of, and potential funding sources for a statewide professional training and certification program for those workers; and

(3) potential sources of local, state, federal, and private funding and technical assistance to support collaboration and cooperation of local early child care and education programs.

SECTION \_\_\_\_ .03. TIME FOR COMPLETION OF STUDY. The interagency work group shall complete the study and report its findings to the legislature not later than December 1, 1997.

SECTION \_\_\_\_ .04. EXPIRATION. This article expires March 1, 1998.

The amendment was read and was adopted by a viva voce vote.

Senator Patterson offered the following amendment to the bill:

#### Floor Amendment No. 9

On page 8, 19 of the single line version of **C.S.H.B. 1863** strike SECTION 2.07 and add a new SECTION 2.07 to read as follows:

SECTION 2.07. TIME LIMITED BENEFITS. Chapter 31, Human Resources Code, is amended by adding Section 31.0065 to read as follows:

Sec. 31.0065. TIME-LIMITED BENEFITS. (a) the department may provide financial assistance under this chapter only in accordance with the time limits specified by this section. The department by rule may provide for exceptions to these time limits if severe personal hardship or community economic factors prevent the recipient from obtaining employment or if the state is unable to provide support services.

(b) The department shall limit financial assistance and transitional benefits in accordance with the following schedule:

(1) financial assistance is limited to a cumulative total of 12 months and transitional benefits are limited to 12 months if the person receiving financial assistance on behalf of a dependent child has:

(A) a high school diploma, a high school equivalency certificate, or a certificate or degree from a two-year or four-year institution of higher education or technical or vocational school; or

(B) work experience of 18 months or more in the last 5 years;

(2) financial assistance is limited to a cumulative total of 24 months and transitional benefits are limited to 12 months if the person receiving financial assistance on behalf of a dependent child has:

(A) completed three years of high school; or  
(B) work experience of not less than six or more than  
18 months in the last 5 years; and

(3) financial assistance is limited to a cumulative total of  
36 months and transitional benefits of 12 months if the person receiving  
financial assistance on behalf of a dependent child has:

(A) completed less than three years of high school; and  
(B) less than six months of work experience.

(c) If the recipient has completed less than three years of high school  
and has less than six months work experience, the department shall  
perform an in-depth assessment of the needs of that person and that  
person's family. If the recipient cooperates with the department's  
assessment, the time period prescribed by Subsection (b)(3) begins on the  
first anniversary of the date on which the department completes the  
assessment, as determined by the department.

(d) The computation of time limits under Subsection (b) begins when  
the adult or teen parent recipient receives notification of the availability  
of an opening in and eligibility for the Jobs Opportunity and Basic Skills  
(JOBS) program Part F, Subchapter IV Social Security Act 42 U.S.C.  
Section 682.

(e) In implementing the time-limited benefits program, the department:

(1) shall provide that a participant in the program may reapply  
with the department for financial assistance on or after the third  
anniversary of the date on which the participant is totally disqualified from  
receiving financial assistance because of the application of Subsection (b)  
of this Section; and

(2) shall establish the criteria for determining what constitutes  
undue hardship under Subsection (a) of this Subsection.

(f) The Texas Department of Human Services shall gradually  
implement Section 31.0065, Human Resources Code, as added by this  
article, by:

(1) selecting at least one county in which to begin implementation  
of the program that has:

(A) a population of 250,000 or more; and  
(B) low unemployment and an effective JOBS program  
placement-rate.

(g) Section 31.0065 applies to a person receiving financial assistance  
on or after the date the section is implemented in the area in which the  
person resides, regardless of the date on which eligibility for that  
assistance is determined. However, the Texas Department of Human  
Services may not consider financial assistance provided before the  
implementation date in determining if a person has exhausted assistance.

(h) The department shall submit to the governor and 75th, 76th and  
77th legislatures a report concerning the effectiveness of the program.  
Each report must include an analysis of the characteristics and  
demographics of recipients and any recommendation for expansion of the  
program including a time table for expansion. The department shall notify  
members of the 75th, 76th, and 77th legislatures and the standing



committees of the senate and house of representatives having primary jurisdiction over the department of the filing of the report.

PATTERSON  
MONCRIEF

The amendment was read.

Senator Haywood offered the following amendment to Floor Amendment No. 9:

**Floor Amendment No. 9A**

Amend Floor Amendment No. 9 to **C.S.H.B. 1863** as follows:

On Section 31.0065(e)(1) after "the" strike the word "third" and insert "fifth".

The amendment to Floor Amendment No. 9 was read and was adopted by the following vote: Yeas 16, Nays 14.

Yeas: Bivins, Brown, Galloway, Harris, Haywood, Leedom, Moncrief, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Turner, Wentworth.

Nays: Armbrister, Barrientos, Cain, Ellis, Gallegos, Lucio, Luna, Madla, Montford, Rosson, Truan, West, Whitmire, Zaffirini.

Absent: Henderson.

Question recurring on the adoption of Floor Amendment No. 9 as amended, the amendment as amended was adopted by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Bivins, Brown, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Turner, Wentworth, Zaffirini.

Nays: Barrientos, Cain, Ellis, Gallegos, Luna, Madla, Rosson, Truan, West, Whitmire.

**(Senator Montford in Chair)**

Senator Moncrief offered the following amendment to the bill:

**Floor Amendment No. 10**

Amend **C.S.H.B. 1863** on page 13, between lines 41 and 42, by adding a new SECTION 3.07 of the bill to read as follows:

Chapter 22, Human Resources Code, is amended by adding Section 22.027 to read as follows:

Section 22.027. Project for Fraud Detection and Prevention Through Data Matching

(a) In order to enhance the state's ability to detect and prevent fraud in the payment of claims under federal and state entitlement programs, the Texas Health and Human Services Commission is authorized to implement a data matching project as described in subsection (b).

(b) The project shall involve the matching of data base information among participating agencies. The Health and Human Services Commission shall contract through a memorandum of understanding with each agency participating in the project. After the data has been matched, the Health and Human Services Commission shall furnish each participating agency with a list of potential fraudulent occurrences or administrative error.

(c) Each agency participating in a matching cycle shall document actions taken to investigate and resolve fraudulent issues noted on the list provided by the Health and Human Services Commission. The Health and Human Services Commission shall compile the documentation furnished by participating agencies for each matching cycle, and shall report the results of the project to the Governor, Lt. Governor, Speaker of the House and Legislative Budget Board no later than December 1, 1996.

(d) The participating agencies as defined in subsection (b) shall cooperate fully with the Health and Human Services Commission in the prompt provision of data in the requested format, for the identification of suspected fraudulent occurrences or administrative errors as the Health and Human Services Commission may otherwise reasonably request in order to carry out the intent of this section.

(e) The Health and Human Services Commission and participating agencies providing source data for the project shall take all necessary steps to protect the confidentiality of information provided as part of this project, in compliance with all existing state and federal privacy guidelines.

The amendment was read and was adopted by a viva voce vote.

**(President in Chair)**

Senator Patterson offered the following amendment to the bill:

**Floor Amendment No. 11**

(1) Amend C.S.H.B. 1863 by deleting lines 24-33 on page 1 of the single line version of C.S.H.B. 1863 and inserting in lieu thereof the following:

(b) The department shall require each adult recipient to sign a bill of responsibilities that defines the responsibilities of the state and of the recipient and encourages personal responsibility. The department shall explain to the applicant the work requirements and time-limited benefits in addition to the other provisions of the agreement before the applicant signs the agreement. The department shall provide each applicant with a copy of the signed agreement. The agreement shall include pertinent case information, including a case number.

(c) The responsibilities of the state shall include administering programs within available resources that:

- (1) promote clear and tangible goals for recipients;
- (2) enable parents to provide for their children's basic necessities within a time limited benefits program.

(3) promote education, job training and workforce development  
(4) support the family structure through life and parenting skills training.

(5) are efficient and fraud-free and easily accessible by recipients,  
(6) gather accurate client information, and  
(7) gives communities the opportunity to develop alternative programs that meet the unique needs of local recipients.

(d) The department shall adopt rules governing sanctions and penalties under this section to or for a person who fails to comply with each applicable requirement of the responsibility agreement prescribed by this section.

(e) The responsibility agreement shall require that:

(1) the parent of a dependent child cooperate with the department and the Title IV-D agency if necessary to establish the paternity of the dependent child and to establish or enforce child support;

(2) if adequate and accessible providers of the services are available in the geographic area and subject to the availability of funds, each dependent child as appropriate complete early and periodic screening, diagnosis, and treatment checkups on schedule and receive the immunization series prescribed by Section 161.004, Health and Safety code, as prescribed in Section 31.031 unless the child is exempted under that section;

(3) each adult recipient, or teen parent recipient who has completed the requirements regarding school attendance in Subsection (6), not voluntarily terminate paid employment of at least 30 hours each week without good cause in accordance with rules adopted by the department;

(4) each adult recipient for whom a needs assessment was conducted participate in an activity to enable that person to become self-sufficient by:

(A) continuing the person's education or becoming literate;

(B) entering a job placement or employment skills training program;

(C) serving as a volunteer in the person's community; or

(D) serving in a community work program or other work program approved by the department;

(5) each caretaker relative or parent receiving assistance not use, sell or possess marihuana or a controlled substance, in violation of Chapter 481, Health and Safety Code or abuse alcohol;

(6) each dependent child younger than 18 years of age or teen parent younger than 19 years of age attend school regularly, unless the child has a high school diploma or high school equivalency certificate or is specifically exempted from school attendance under Section 21.033 Education Code;

(7) each recipient comply with department rules regarding proof of school attendance; and

(8) each recipient attend parenting skills training classes.

(f) In conjunction with the Central Education Agency, the department by rule shall ensure compliance with the school attendance requirements of Subsection (d)(6) by establishing criteria for:

- (1) determining whether a child is regularly attending school;
- (2) exempting a child from school attendance in accordance with Subchapter B, Chapter 21, Education Code; and
- (3) determining when an absence is excused.

(g) The department, by rule, may provide for exemptions from Subsection (4), or for a teen parent under Subsection (6). The department shall not require participation in an activity under Subsection (4) or for a teen parent under Subsection (6) if funding for support services is unavailable.

(h) In this section, "caretaker relative" means a person who is listed as a relative eligible to receive assistance under 42 U.S.C. Section 602(a).

(2) Amend C.S.H.B. 1863 by adding a new SECTION 1.02 to read as follows:

SECTION 1.02. Amend Chapter 31, Human Resources Code, by adding a new sections 31.0032, 31.0033, and 31.0034 to read as follows:

Section 31.0032. PENALTIES AND SANCTIONS. (a) If after an investigation the department determines that a person is not complying with a requirement of the responsibility agreement prescribed by Section 31.0031 the department shall apply appropriate sanctions or penalties regarding assistance provided to or for that person under this chapter.

(b) The department shall immediately notify the caretaker relative, second parent, or payee receiving the financial assistance whether sanctions will be applied under this section.

(c) This section does not prohibit the department from providing medical assistance, child care or any other social or support services for an individual subject to sanctions or penalties under this chapter.

Sec. 31.0033 GOOD CAUSE NONCOMPLIANCE HEARING. (a) If the department determines that penalties and sanctions should be applied under Section 31.0032, the person determined to have not complied or, if different, the person receiving the financial assistance may request a hearing to show good cause for noncompliance not later than the 10th day after the date on which notice is received under Section 31.0032.

(b) The department shall promptly conduct a hearing if a timely request is made under Subsection (a).

(c) If the department finds that good cause for noncompliance was not shown at a hearing, the department shall apply appropriate sanction or penalties to or for that person until the department determines that the person is in compliance with the terms of the responsibility agreement.

(d) The department by rule shall establish criteria for good cause noncompliance and guidelines for what constitutes a good faith effort on behalf of a recipient under this section.

Section 31.0034 ANNUAL REPORT. The department shall prepare and submit an annual report to the legislature that contains statistical

information regarding persons who are applying for or receiving financial assistance or services under this chapter, including the number of persons receiving assistance, the type of assistance those persons are receiving, and the length of time those persons have been receiving the assistance. The report must also contain information on:

(1) the number of persons to whom Sanctions and Time-Limits apply;

(2) the number of persons under each time limit category;

(3) the number of persons who are exempt from participation under Section (31.012(b));

(4) the number of persons who were receiving financial assistance under this chapter but are no longer eligible to receive that assistance because they failed to comply with the requirements by Section 31.001 Chapter 31. Human Resources Code; and

(5) the number of persons who are no longer eligible to receive financial assistance or transitional benefits under this chapter because:

(A) the person's household income has increased due to employment or marriage; or

(B) the person has exhausted the person's benefits under this chapter; and

(6) the number of persons receiving child care, job training or other support services designed to assist the transition to self sufficiency.

(b) Except as provided by Subsection (c) of this section, Sections 31.0032 and 31.0065, Human Resources Code, as added by this article, apply to a person receiving financial assistance on or after the effective date of this article, regardless of the date on which eligibility for that assistance is determined.

(c) Not later than January 1, 1996, the Texas Department of Human Services shall require each recipient who applied for financial assistance before the effective date of this article to sign the responsibility agreement prescribed by Section 31.001, Human Resources Code, as added by this article. The department may not enforce the terms of the agreement against a recipient who has not had an opportunity to sign the agreement.

PATTERSON  
MONCRIEF

The amendment was read and was adopted by the following vote:  
Yeas 25, Nays 6.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Turner, Wentworth, West, Zaffirini.

Nays: Barrientos, Gallegos, Luna, Rosson, Truan, Whitmire.

(Senator Ratliff in Chair)

(President in Chair)

Senator Ellis offered the following amendment to the bill:

**Floor Amendment No. 12**

Amend C.S.H.B. 1863 as follows:

On page 2, insert the following between lines 1 and 2 and renumber the subsequent sections appropriately.

SECTION 1.02. NEEDS ASSESSMENT. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.0095 to read as follows:

Sec. 31.0095. NEEDS ASSESSMENT. The department shall assist a recipient in assessing the particular needs of that recipient and the recipient's family upon notification of entry into the JOBS program. The department and the recipient shall develop an employability plan to help the recipient achieve independence from public assistance granted to the recipient and the recipient's family.

The amendment was read and was adopted by a viva voce vote.

Senator Rosson offered the following amendment to the bill:

**Floor Amendment No. 13**

Amend C.S.H.B. 1863 by adding a new subsection (c) to added Section 403.024 of Subchapter B, Chapter 403, Government Code, after line 28, page 8 of the committee printing, to read as follows:

(c) State agencies that otherwise distribute information to the public may use existing resources to distribute information to persons likely to qualify for federal earned income tax credits and shall cooperate with the comptroller in information distribution efforts.

The amendment was read and was adopted by a viva voce vote.

Senator Turner offered the following amendment to the bill:

**Floor Amendment No. 14**

Amend C.S.H.B. 1863 by adding the following appropriately numbered section in an appropriate place:

SECTION \_\_\_\_ . Subtitle B, Title 3, Human Resources Code, is amended by adding Chapter 72 to read as follows:

CHAPTER 72. COMMUNITY PARTNERSHIPS FOR  
CHILDREN AND FAMILIES.

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 72.001. PURPOSE. The purpose of this chapter is to increase community involvement and support on behalf of children, youth, and families by promoting local solutions to local problems, encouraging local volunteer involvement, and making the state a partner in the efforts of local communities to meet the needs of children and youth. By improving child and family services, the Legislature seeks to increase the likelihood that Texas children will:

- (1) live in stable, nurturing, and supportive families;
- (2) be mentally and physically healthy;

(3) enter school able to learn to their fullest potential and be able to succeed in school; and

(4) develop into productive, law-abiding citizens.

Sec. 72.002. DEFINITIONS. In this chapter:

(1) "Board" means the Legislative Health and Human Services Board created under Chapter 330, Government Code.

(2) "Child" means a person younger than 19 years of age.

(3) "Commission" means the Health and Human Services Commission.

(4) "Commissioner" means the commissioner of health and human services.

[Sections 72.003-72.020 reserved for expansion]

SUBCHAPTER B. STATE PARTICIPATION IN PARTNERSHIP  
FOR SERVICES TO CHILDREN AND FAMILIES

Sec. 72.021. DESIGNATED STATE AGENCY. (a) The Health and Human Services Commission is the state agency responsible for providing leadership to ensure that the purposes of this subchapter are realized.

(b) The commission may require health and human service, education, and juvenile justice agencies listed under Section 72.022(a) to provide staff and other administrative support as necessary to assist the commission in discharging its responsibilities under this section.

Sec. 72.022. RESPONSIBILITIES OF STATE AGENCIES. (a) In conjunction with the commissioner of health and human services, the executive director, commissioner, or other executive head, as appropriate, of the following state agencies shall ensure that the agency cooperates with the commissioner to accomplish the objectives of this chapter except when those objectives conflict with rules adopted by the elected or appointed board of the agency:

(1) Central Education Agency;

(2) Health and Human Services Commission;

(3) Department of Protective and Regulatory Services;

(4) Interagency Council on Early Childhood Intervention Services;

(5) Texas Commission on Alcohol and Drug Abuse;

(6) Texas Commission for the Blind;

(7) Texas Department of Health;

(8) Texas Department of Human Services;

(9) Texas Department of Mental Health and Mental Retardation;

(10) Texas Juvenile Probation Commission;

(11) Texas Youth Commission;

(12) Texas Employment Commission; and

(13) Children's Trust Fund of Texas Council.

(b) The executive director, commissioner, or other executive head of an agency shall designate an employee of the agency to represent the agency, under the direction of the executive head, and assist the agency in carrying out the objectives of Subsection (f).

(c) The commissioner of health and human services and the commissioner of education shall regularly meet with the agency

representatives to determine the progress made toward accomplishing the goals of Subsection (f).

(d) The representatives of the agencies shall meet at the call of the commissioner of health and human services.

(e) Each agency is responsible for the expenses of that agency's representative. An agency representative does not receive any additional compensation for representing the agency or for carrying out other duties under this chapter.

(f) The agencies shall collaborate under the direction of the commissioner to accomplish the following objectives:

(1) establishing a system for encouraging and supporting the development of local child and family commissions throughout the state by, among other means, eliminating administrative or regulatory barriers and providing sufficient technical assistance to those commissions;

(2) developing short-range and long-range strategies addressing education, health and human services, and juvenile justice issues, and that accomplish the purposes prescribed by Section 72.001;

(3) defining common, uniform, cross-agency outcome measures and a system of evaluation to measure the effects of state agency programs for children and families;

(4) initiating strategies for refinancing children's services administered by state agencies to ensure the most effective use of federal, state, and local funds;

(5) submitting a quarterly report to the board on progress in meeting the objectives of this subsection; and

(6) promptly responding, in consultation with the board, to other relevant issues which may arise.

(g) The executive director, commissioner, or other executive head of each agency shall ensure that the strategic plan, budget, and performance measures of the agency reflect the joint responsibilities listed in Subsection (f).

(h) The commissioner may solicit the participation of other agencies involved in child and family issues, including institutions of higher education, to accomplish the purposes of this section.

[Sections 72.023-72.030 reserved for expansion]

#### SUBCHAPTER C. LOCAL CHILD AND FAMILY COMMISSIONS

Sec. 72.031. DEFINITION. In this subchapter, "local commission" means a local child and family commission certified by the commission under this subchapter.

Sec. 72.032. CERTIFICATION OF LOCAL COMMISSIONS. (a) The commission may annually solicit applications for new local commissions from counties which have not established a local commission. A commissioners court of a county, governing body of a municipality, council of governments, regional planning body or similar entity, local United Way, or an organization that meets the requirements of Section 72.033 may submit a proposal for a local commission. The commission may accept only one proposal from each county.

(b) A proposal submitted under this section must:



(1) demonstrate that the proposal is a collaborative initiative among entities contributing significant funding for child and family services within the county;

(2) demonstrate that the applicant has consulted with local governments and other public entities, nonprofit organizations, voluntary associations, representatives of low-income persons, and other groups involved in providing health and human services or funding for those services about the needs of the community and how to meet those needs; and

(3) identify the proposed membership of the local commission.

(c) If the commission receives competing applications from a county, the commissioner shall seek the recommendation of the commissioners court of the county regarding certification of the local commission.

(d) The commission shall adopt rules for providing technical support to the local commissions, assisting them in eliminating administrative and regulatory barriers, and certifying and monitoring the operation of local commissions.

(e) The commission shall provide technical support to local commissions which evaluate the delivery of child and family services under Sec. 72.035(b)(4). Such support may include the outcome measures and system of evaluation prescribed by Sec. 72.022(f)(3).

(f) A local commission may serve one or more counties, but a county may not be served by more than one local commission.

(g) Subject to available funding, the Health and Human Services Commission shall certify a local commission after receiving a proposal which conforms to the rules adopted by the commission. A local commission is established upon certification by the Health and Human Services Commission.

Sec. 72.033. MEMBERSHIP OF LOCAL COMMISSIONS. (a) A local commission shall include:

(1) a member of the governing body of the most populous municipality located in the county and a member of the governing body of one other municipality located in the county;

(2) a member of the commissioners court of the county;

(3) an elected school board member from any participating public school district in the county, or the board member's designee;

(4) a member of the juvenile board which serves the county or the member's designee;

(5) a representative of the local United Way;

(6) not fewer than three parents who are current or former recipients of child and family services, including the parent of a child with a disability;

(7) representatives from business, religious, civic, and community-based organizations;

(8) any additional member that the original applicant or the local commission considers necessary.

(b) A local commission shall include the following individuals as non-voting ex-officio members:

(1) the executive director of the local mental health authority or the executive director's designee;

(2) the local administrator of the Texas Department of Health or the administrator's designee;

(3) the local administrator of the Texas Department of Human Services or the administrator's designee;

(4) a local child protective services administrator or the administrator's designee;

(5) a representative of the Head Start grantee if there is such a grantee in the county and a representative of the local Community Services Block Grant recipient if the recipient is an organization other than the Head Start grantee;

(6) the local Department of Human Services Child Care Management Service contractor or the contractor's designee;

(7) a County Agriculture Extension Agent; and

(8) any additional member that the original applicant or the local commission considers necessary.

(c) In the event any of the persons listed in Sec. 72.033(a) and (b) are unable to participate in the formation of a local commission for any reason, the local commission shall consist of the remaining members.

(d) A local commission may appoint such advisory committees as necessary to satisfy requirements for federal funds, to qualify representation in the event a local commission is established by two or more counties, or to serve specific neighborhoods or communities.

(e) An applicant for certification under Section 72.032 shall attempt to ensure participation on the local commission by women and minorities, including African Americans, Hispanic Americans, Native Americans, and Asian Americans.

Sec. 72.034. ADMINISTRATION OF LOCAL COMMISSIONS. (a) The members of a local commission serve staggered two-year terms, with the terms of as near as possible to half of the members expiring February 1 of each year. Members shall draw lots at the first local commission meeting to determine the length of each member's initial term and the year that term expires. Members shall choose the new members by vote before the outgoing members leave office. At all times the membership of a local commission shall be as designated in Section 72.033.

(b) Members may serve consecutive terms.

(c) The members shall elect a member who is an elected official to serve as presiding officer. A presiding officer serves a two-year term and may serve consecutive terms.

(d) Meetings of local commissions shall be conducted according to Robert's Rules of Order.

(e) Members of a local commission serve without compensation, but a member may be reimbursed for actual expenses incurred in the performance of the member's official duties. Expenses under this subsection must be reported in the local commission's records and must be approved by the commission.

Sec. 72.035. POWERS, DUTIES, AND RESPONSIBILITIES OF LOCAL COMMISSIONS. (a) A local commission shall develop and submit to the commission local plans for services for children and families that are related to the purposes of this chapter listed under Section 72.001, which may include local budgetary priorities and proposals for alternative delivery systems.

(b) A local commission may:

(1) facilitate and recognize collaboration between child and family service providers;

(2) mobilize public, business, and voluntary agency partnerships and promote the use of individual volunteers to address the needs of children and youth and to strengthen families;

(3) assess the need for child and family services and available resources in the community served by the local commission;

(4) monitor the effectiveness and efficiency with which public and private organizations deliver child and family services and make recommendations to the commission regarding maximizing the use of local, state, and federal funds; and

(5) foster the development of new services to meet family needs more effectively, including services aimed at preventing child abuse, poverty, malnutrition, failure in school, and juvenile delinquency.

(c) A local commission has all of the powers necessary for the effective operation of the local commission, including the power to:

(1) contract for assistance in administration or management of the commission and for services to administer its funds;

(2) pay all operating expenses by warrants drawn on funds available for that purpose; and

(3) accept gifts and grants from any source to finance its programs and facilities.

(d) A local commission may not directly deliver child and family services, other than public information or referral services, but shall contract with third parties for the delivery of services.

(e) If a local commission monitors the delivery of child and family services under Subsection (b)(4), it may not impose unduly burdensome reporting requirements on organizations that receive public money to deliver those services. To the maximum extent possible, a local commission shall rely on reports such organizations provide to other funding entities to carry out its responsibilities under this section.

Sec. 72.036. LOCAL GRANTS; NOTICE. (a) A municipality, county, or political subdivision may provide a grant to a local commission to achieve the purposes of this chapter.

(b) A local commission shall allow adequate notice and opportunity for public comment, including comments from the entities listed in Section 72.022(a), before contracting for services.

Sec. 72.037. ANNUAL AUDIT. (a) A local commission shall contract with an independent auditor for an annual financial audit.

(b) The state auditor shall, with the advice of the commission, develop standardized forms and schedules for a local commission to use in

conducting an annual financial audit. A local commission shall use the forms and schedules developed by the state auditor for its annual financial audit.

Sec. 72.038. LIMITATION OF LIABILITY. (a) A local commission is a governmental unit for purposes of Chapter 101, Civil Practice and Remedies Code.

(b) A member of a local commission is not liable for civil damages for any act performed in good faith in the execution of duties as a commission member or for an action taken by the commission.

[Sections 72.039-72.050 reserved for expansion]

#### SUBCHAPTER D. STATE GRANTS AND STATE AGENCY COOPERATION

Sec. 72.051. FUNDS AVAILABILITY. (a) In conjunction with the agencies listed under Section 72.022(a) and with the consent of the Legislative Budget Board, the commission shall develop a budget mechanism to combine state and federal funds administered by the state to provide grants to local child and family commissions established under Subchapter C.

(b) The Legislative Budget Board, at the request of the commission, may transfer appropriations from state child-serving agencies to the commission in accordance with Subsection (a).

(c) The commission shall promulgate rules for the distribution of grant funds that may be appropriated by the legislature for local child and family commissions. Funds appropriated for local commissions may be used for grants under this Section or for grants under Section 72.052.

(d) A grant to a local child and family commission made under this section must:

(1) be distributed locally for services that promote the social, emotional, or physical well-being of children and promote family support; and

(2) be matched by local resources, in cash or in kind, equal to at least one-quarter of the grant amount, except as provided by Subsection (e).

(e) The commission by rule shall provide for the distribution of available funds based on a county's child population and per capita income.

(f) The commission may modify the match amount required by Subsection (c) if the modification is necessary to accomplish the effective distribution of funds. If the commission modifies the match formula, the modification shall apply to all applicants for funds under this section.

(g) The commission may retain not more than two percent of any funds appropriated for state grants under this section and may use those funds only for the administration of the grant program at the state level and for carrying out the duties prescribed by Section 72.022.

(h) The value of an in-kind match of local resources made under Subsection (c)(2) is equal to the fair market value of the resources received.

(i) Local commissions shall measure program effectiveness and ensure fiscal accountability in the delivery of child and family services funded through grants provided under this section.

Sec. 72.052. COMMUNITY ASSISTANCE GRANTS. (a) The commission by rule may provide a procedure by which it may make a one-time assistance grant to a local community on its certification to provide an incentive to establish a local child and family commission and support its initial operation.

(b) If funds are available, the commission may provide an assistance grant to a local community on certification of a local child and family commission. A grant under this subsection:

(1) must be in proportion to the child population of the county, not to exceed \$50,000 in a large urban area; and

(2) must be matched by local resources, in cash or in kind, equal to at least one-half of the amount of the assistance grant.

(c) The value of an in-kind match of local resources made under Subsection (b)(2) is equal to the fair market value of the resources received.

Sec. 72.053. COOPERATION WITH STATE AGENCIES; PERSONNEL. (a) A local child and family commission shall cooperate with the commission in setting performance standards and evaluating results for child and family programs for which the local commission and the commission are responsible.

(b) The commission may assist local child and family commissions in coordinating the efforts of state employees involved in child and family programs developed by local commissions.

[Sections 72.054-72.070 reserved for expansion]

#### SUBCHAPTER E. MISCELLANEOUS PROVISIONS

Sec. 72.071. COLLABORATION AGREEMENTS. (a) State and local agencies that serve children and families, including local child and family commissions established under Subchapter C, may enter into collaboration agreements to accomplish the purposes prescribed by Section 72.001.

(b) A collaboration agreement may involve education, vocational rehabilitation, health, mental health, employment and training, child welfare, social services, juvenile justice, and other services or programs designated by the commission.

Sec. 72.072. FUNDS. All funds received by the commission under this chapter are subject to Subchapter F, Chapter 404, Government Code.

Sec. 72.073. This Chapter expires on September 1, 2007.

The amendment was read.

Senator Brown offered the following amendment to Floor Amendment No. 14:

#### **Floor Amendment No. 14A**

Amend Floor Amendment No. 14 to **C.S.H.B. 1863** as follows:

Amend proposed Section 72.022, by adding the following after Subsection (h):

"(i) A school district may not be required under this section to implement a policy or procedure without the consent of the board of trustees of the district."

The amendment to Floor Amendment No. 14 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 14 as amended, the amendment as amended was adopted by the following vote: Yeas 16, Nays 14.

Yeas: Armbrister, Barrientos, Cain, Ellis, Gallegos, Lucio, Luna, Madla, Moncrief, Montford, Rosson, Truan, Turner, West, Whitmire, Zaffirini.

Nays: Bivins, Brown, Galloway, Harris, Haywood, Henderson, Leedom, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Wentworth.

Absent: Sims.

#### FLOOR PRIVILEGES GRANTED

On motion of Senator Ellis and by unanimous consent, floor privileges were granted to his staff members during the deliberation of Floor Amendment No. 15 to **C.S.H.B. 1863**.

Senator Ellis offered the following amendment to the bill:

#### Floor Amendment No. 15

Amend **C.S.H.B. 1863** by adding new articles appropriately numbered to read as follows:

##### ARTICLE \_\_\_\_ . WORKFORCE DEVELOPMENT

SECTION 1.01. The heading of Subtitle B, Title 4, Labor Code, is amended to read as follows:

##### SUBTITLE B. WORKFORCE DEVELOPMENT; ~~[ADDITIONAL]~~ EMPLOYMENT SERVICES

SECTION 1.02. Subtitle B, Title 4, Labor Code, is amended by adding new Chapters 301, 302, and 303 to read as follows:

##### CHAPTER 301. GENERAL PROVISIONS

Sec. 301.001. APPLICATION OF SUNSET ACT. The Texas Department of Workforce Development is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2007.

Sec. 301.002. DEFINITIONS. Except as otherwise provided, in this subtitle:

(1) "Commissioner" means the commissioner of workforce development.

(2) "Council" means the Council on Workforce and Economic Competitiveness.

(3) "Department" means the Texas Department of Workforce Development.

##### CHAPTER 302. TEXAS DEPARTMENT OF WORKFORCE DEVELOPMENT

##### SUBCHAPTER A. ORGANIZATION

Sec. 302.001. PURPOSE; AGENCY GOALS. (a) The Texas Department of Workforce Development is a state agency created to

administer an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related educational programs available in this state.

(b) The department shall meet the needs of:

(1) the businesses of this state for a highly skilled and productive workforce;

(2) the workers of this state for education, skills training, and labor market information to enhance their employability, earnings, and standard of living; and

(3) the taxpayers of this state to ensure that tax revenues for workforce development are spent efficiently and effectively.

Sec. 302.002. AGENCY STRUCTURE. The department is composed of the commissioner of workforce development and the staff of the department.

[Sections 302.003-302.020 reserved for expansion]

#### SUBCHAPTER B. COMMISSIONER; AGENCY ADMINISTRATION

Sec. 302.021. COMMISSIONER. (a) The Texas Employment Commission shall recommend to the governor an individual to be named as commissioner of workforce development. The governor may either appoint the individual or reject the nomination. If the governor rejects the nomination, that commission shall recommend additional appointees until the governor makes the appointment. Appointment of the commissioner is subject to confirmation by the senate.

(b) The commissioner shall serve a two-year term that expires on February 1 of each odd-numbered year. The commissioner may serve consecutive terms.

(c) To be appointed commissioner, a person must have broad experience, with recognized abilities of the highest order in organization, direction, and coordination of workforce development programs and in the administration and management of employment programs generally. The commissioner must be a citizen of the United States.

(d) The commissioner shall execute an official bond in an amount not to exceed \$50,000, conditioned on the faithful performance of the duties of the office as prescribed by the laws of this state and by Chapter 653, Government Code.

Sec. 302.022. GENERAL POWERS AND DUTIES OF COMMISSIONER. (a) The commissioner shall:

(1) to the extent feasible under federal law, consolidate the administrative and programmatic functions of the programs under the authority of the department to achieve efficient and effective delivery of services;

(2) administer each program and implement corresponding federal and state legislation consolidated under the authority of the department under this chapter and other applicable state law;

(3) determine the organization and methods of procedure of the department in accordance with applicable state and federal legislation;

(4) appoint and prescribe the duties of all officers, administrators, accountants, attorneys, experts, and other employees as necessary in the performance of the department's duties;

(5) delegate authority to persons appointed under this section as the commissioner considers reasonable and proper for the effective administration of the department;

(6) adopt rules in accordance with Chapter 2001, Government Code, as necessary for the proper administration of the department;

(7) bond any person who handles money or signs checks for the department;

(8) implement workforce training and services policies and programs, consistent with recommendations from the council and as approved by the governor;

(9) serve as an advocate at the state and federal levels for local workforce development boards;

(10) contract with local workforce development boards for program planning and service delivery;

(11) provide training and professional development services for department staff, local workforce development boards, and the staff of those boards;

(12) support research and demonstration projects designed to develop new programs and approaches to service delivery;

(13) provide technical assistance and support to local workforce development boards;

(14) prepare and submit an annual agency performance report to the governor, the legislature, the council, and the Texas Employment Commission;

(15) respond promptly in writing to any reasonable request for information made by a member of the Texas Employment Commission; and

(16) perform other functions and duties as may be required by law or assigned by the governor.

(b) The commissioner may adopt rules, make expenditures, enter into contracts with public, private, and nonprofit organizations, require reports, conduct investigations, and take other action the commissioner considers necessary or suitable to fulfill the department's administrative duties.

(c) The commissioner may obligate funds from the smart jobs fund and the skills development fund in a manner consistent with the rules adopted for those programs. The commissioner shall report to the governor, the legislature, the council, and the Texas Employment Commission on a quarterly basis regarding actions taken under this subsection.

Sec. 302.023. PERSONNEL POLICIES. (a) The commissioner shall develop an intra-agency career ladder program for employees of the department. The program shall require the intra-agency posting of all nonentry-level positions concurrently with any public posting.

(b) The commissioner shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees must be based on the system established under this subsection.

Sec. 302.024. STANDARDS OF CONDUCT INFORMATION. The commissioner shall provide to the department's employees as often as necessary information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers and employees.



Sec. 302.025. EQUAL EMPLOYMENT OPPORTUNITY POLICIES.

(a) The commissioner shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with Chapter 21;

(2) a comprehensive analysis of the department's workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the department's workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement under Subsection (a) must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subsection (a), and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports to the legislature.

[Sections 302.026-302.040 reserved for expansion]

SUBCHAPTER C. JURISDICTION OF DEPARTMENT OF  
WORKFORCE DEVELOPMENT

Sec. 302.041. CONSOLIDATION OF WORKFORCE DEVELOPMENT PROGRAMS. (a) The following job-training, employment, and employment related educational programs are consolidated under the authority of the department:

(1) adult education programs under Section 11.18, Education Code;

(2) proprietary schools programs under Chapter 32, Education Code;

(3) apprenticeship programs under Chapter 33, Education Code;

(4) the employment incentive programs under Chapter 31, Human Resources Code;

(5) the employment program under Chapter 101, Human Resources Code;

(6) the work and family policies program under Chapter 81;

(7) job-training programs funded under the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.);

(8) the job counseling program for displaced homemakers under Chapter 304;

(9) the Communities in Schools program under Chapter 305;

- (10) the reintegration of offenders program under Chapter 306;
- (11) the Texas State Employment Service under Chapter 307;
- (12) the smart jobs fund program created under Subchapter J, Chapter 481, Government Code;
- (13) the inmate employment counseling program under Section 499.051(f), Government Code;
- (14) the continuity of care program under Section 501.095, Government Code;
- (15) a literacy program from funds available to the state under Section 481.026, Government Code;
- (16) the driver and traffic safety program under the Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes);
- (17) the community service program under the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);
- (18) the trade adjustment assistance program under Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);
- (19) the Job Opportunities and Basic Skills program under Part E, Subchapter IV, Social Security Act (42 U.S.C. Section 682); and
- (20) the food stamp employment and training program authorized under 7 U.S.C. Section 2015(d).

(b) In addition to the programs consolidated under the authority of the department under Subsection (a), the department shall administer:

(1) programs in this state to enhance the employment opportunities of veterans of the armed services of the United States, including the employment program funded under Chapters 41 and 42, Title 38, United States Code; and

(2) employment-related child-care services.

(c) To the extent permitted under federal law, the department shall administer the programs funded through the education coordination funds under Section 123, Job Training Partnership Act (29 U.S.C. Section 1533).

Sec. 302.042. CLIENT ACCESSIBILITY. The commissioner shall develop a uniform, statewide client application and enrollment process to determine an applicant's eligibility for workforce training and services funded through the department.

Sec. 302.043. INTEGRATION OF PROGRAM ADMINISTRATION.  
(a) The commissioner shall develop a plan for the integration of the administrative and program functions of the various job-training, education, and employment programs under the jurisdiction and authority of the commissioner.

(b) The plan under Subsection (a) shall specify dates by which integration of the various functions must be completed. To the extent possible, the plan shall be based on existing state and federal funds and designed to minimize the disruption of services at the local level.

(c) The plan under Subsection (a) shall be developed and submitted to the governor, the legislature, and the council not later than December 1, 1996.

(d) This section expires January 1, 1997.

[Sections 302.044-302.060 reserved for expansion]

SUBCHAPTER D. STATE-LOCAL PLANNING; LOCAL  
WORKFORCE DEVELOPMENT BOARDS

Sec. 302.061. STATE-LOCAL PLANNING PROCESS. The commissioner shall design and implement a state-local planning process for workforce training and services provided through the programs under the jurisdiction of the commissioner.

Sec. 302.062. REVIEW OF LOCAL PLANS; RECOMMENDATIONS. The commissioner shall review the local workforce training and services plans developed under Section 4.05, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), and shall make recommendations to the council regarding the implementation of those plans.

Sec. 302.063. TRAINING FOR LOCAL WORKFORCE DEVELOPMENT BOARD MEMBERS. (a) The department shall provide management and board development training for all members of local workforce development boards that includes information regarding the importance of high-quality workforces to the economic prosperity of their communities and encourages board members to be advocates in their communities for effective and efficient workforce development programs. If a member of a local workforce development board does not receive training under this section before the 91st day after the date on which the member begins service on the board, the person is ineligible to continue serving on the board.

(b) Training may be provided directly by the department or by a third party that has demonstrated experience in providing training to local workforce development or similar boards.

(c) A local workforce development board shall provide at least 25 percent of the costs for the management and board development training of its members.

[Sections 302.064-302.080 reserved for expansion]

SUBCHAPTER E. ALLOCATION OF FUNDS;  
BLOCK GRANT PROGRAM

Sec. 302.081. ADMINISTRATION FUNDING. Unless superseded by federal or other state law, the commissioner may use an amount not to exceed 20 percent of the amount of funds available to the department for workforce training and services to implement state-level responsibilities, including administration, research and planning, system design and development, and training and technical assistance.

Sec. 302.082. BLOCK GRANTS TO LOCAL WORKFORCE DEVELOPMENT AREAS. (a) The commissioner shall provide to the local workforce development areas in which local workforce development boards have been formed, through a block grant process, not less than 80 percent of the funds available to the department for workforce training and services, unless superseded by federal or state law.

(b) In the case of funds that, as of May 31, 1995, are allocated to this state or regions of this state through the application of established

formulas, the commissioner shall allocate amounts across the state using the same formula that was used to provide the funds to the state or that region.

(c) In the case of funds that are not allocated by formula to this state or regions of this state, the commissioner shall develop a need-based formula that will equitably allocate funds among local workforce development areas throughout this state.

(d) In any state fiscal biennium, the commissioner may not allocate to a local workforce development area less than 90 percent or more than 125 percent of the amount received by that area during the preceding state fiscal biennium.

(e) In areas of the state not yet designated as local workforce development areas or in areas of the state that have been so designated but in which local workforce development boards have not been formed, the commissioner shall provide funds for the provision of workforce training and services in those areas to the extent allowed by federal law.

Sec. 302.083. WAIVERS. The commissioner shall develop objective criteria for the granting of waivers allowed under this chapter.

#### CHAPTER 303. SKILLS DEVELOPMENT FUND

Sec. 303.001. PURPOSE. The purpose of this chapter is to remove administrative barriers that impede the response of community and technical colleges to industry training needs and to develop incentives for community and technical colleges to provide customized training in a timely and efficient manner.

Sec. 303.002. WAIVER. (a) The department may review and recommend to the legislature the waiver of any requirements set forth in Title 3, Education Code, as they may apply to community and technical colleges, that impede the ability of such a college to develop in a timely manner customized training for demand occupations in particular industries, including statutes or regulations limiting costs that may be recovered by a community or technical college from state funds.

(b) A community or technical college may recover customized training costs incurred by the college if:

(1) the number and kind of jobs available for individuals receiving customized training is sufficient to support the customized training course offered by the college; and

(2) the wages available for individuals who successfully complete customized training at a community or technical college are comparable to the wages of individuals who received similar skills and training through the employer or private trainer.

Sec. 303.003. SKILLS DEVELOPMENT FUND. (a) To achieve the purposes of this chapter, the skills development fund is created from money in the general revenue fund.

(b) The skills development fund may be used by community and technical colleges as start-up or emergency funds for the following job-training purposes:

(1) developing customized training programs for businesses and trade unions; and

(2) sponsoring small and medium-sized business networks.

(c) The commissioner, or a person appointed by the commissioner who is knowledgeable in the administration of grants, is responsible for the distribution of money from the skills development fund.

Sec. 303.004. FUND REVIEW. The Texas Higher Education Coordinating Board shall review all customized training programs biennially to verify that state funds are being used appropriately by community and technical colleges under this chapter.

SECTION 1.03. Chapter 302, Labor Code, is redesignated as Chapter 304, Labor Code, and amended to read as follows:

CHAPTER 304 [~~302~~]. EMPLOYMENT

COUNSELING FOR DISPLACED HOMEMAKERS

Sec. 304.001. DEFINITION [~~302.001. DEFINITIONS~~]. In this chapter, "displaced":

[(1)] "~~Commission~~" means the Texas Employment Commission.

[(2)] "~~Displaced~~" homemaker" means a person who:

(1) [(A)] has worked without pay as a homemaker for the person's family;

(2) [(B)] is not gainfully employed;

(3) [(C)] has had, or would have, difficulty in obtaining employment; and

(4) [(D)] has depended on:

(A) [(+)] the income of a family member for financial support and has lost that income; or

(B) [(+)] government assistance as the parent of dependent children and is no longer eligible for that assistance.

Sec. 304.002 [~~302.002~~]. JOB COUNSELING PROGRAM. (a) The department [~~commission~~], through a special assistance job counseling program, shall:

(1) provide counseling for displaced homemakers;

(2) assist displaced homemakers in obtaining training and education; and

(3) place displaced homemakers in suitable employment.

(b) The counseling must:

(1) consider and build on the skills and experiences of the homemaker; and

(2) prepare the person, through employment counseling, to reenter the paid work force and develop and improve job skills.

(c) The department [~~commission~~] shall design the program specifically for persons reentering the paid work force after a number of years as homemakers to enable them to assume or resume a valuable role in the paid work force commensurate with the homemakers' talents and abilities.

(d) The department [~~commission~~] may not charge a fee for participation in the program by a displaced homemaker.

Sec. 304.003 [~~302.003~~]. PERSONNEL; OFFICE. The department [~~commission~~] shall use its personnel, services, facilities, and equipment to operate the job counseling program.

Sec. ~~304.004~~ [302.004]. COOPERATION BY STATE AGENCIES AND POLITICAL SUBDIVISIONS. State agencies and political subdivisions of the state shall cooperate with the department [commission] in obtaining suitable employment for displaced homemakers counseled by the department [commission].

SECTION 1.04. Chapter 216, Labor Code, is moved from Subtitle A, Title 4, Labor Code, to Subtitle B of that title, redesignated as Chapter 305, Labor Code, and amended to read as follows:

CHAPTER ~~305~~ [216]. COMMUNITIES IN SCHOOLS PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. ~~305.001~~ [216.001]. DEFINITIONS. In this chapter:

- (1) "Agency" means the Central Education Agency.
- (2) "Communities in Schools program" means an exemplary youth dropout prevention program.

Sec. ~~305.002~~ [216.002]. STATEWIDE OPERATION OF PROGRAM. It is the intent of the legislature that the Communities in Schools program operate throughout this state.

[Sections ~~305.003-305.010~~ [216.003-216.010]  
reserved for expansion]

SUBCHAPTER B. OPERATION OF PROGRAM

Sec. ~~305.011~~ [216.011]. STATE COORDINATOR. The commissioner [administrator of the commission] shall appoint a state coordinator for the Communities in Schools program.

Sec. ~~305.012~~ [216.012]. DUTIES OF STATE COORDINATOR. The state coordinator shall:

- (1) coordinate the efforts of social service organizations and agencies and of public school personnel to provide services to students who are at risk of dropping out of school or engaging in delinquent conduct;
- (2) set standards for the Communities in Schools program;
- (3) obtain information from each participating school district to determine necessary program changes;
- (4) promote and market the program in communities in which the program is not established;
- (5) help communities that want to participate in the program establish a local funding base; and
- (6) train a program director for each participating community.

Sec. ~~305.013~~ [216.013]. AGENCY COOPERATION; MEMORANDUM OF UNDERSTANDING. (a) The agency and the department [commission] shall work together to maximize the effectiveness of the Communities in Schools program.

(b) The agency and the department [commission] shall develop and mutually agree to a memorandum of understanding to clearly define the responsibilities of each agency under this chapter. The memorandum must address:

- (1) the role of the department [commission] in encouraging local business to participate in local Communities in Schools programs;

(2) the role of the agency in obtaining information from participating school districts;

(3) the use of federal or state funds available to the agency or the department ~~[commission]~~ for programs of this nature; and

(4) other areas identified by the agency and the commissioner ~~[commission]~~ that require clarification.

(c) The agency and the commissioner ~~[commission]~~ shall adopt rules to implement the memorandum and shall update the memorandum and rules annually.

[Sections 305.014-305.020 ~~[216.014-216.020]~~  
reserved for expansion]

#### SUBCHAPTER C. PARTICIPATION IN PROGRAM BY CERTAIN SCHOOLS

Sec. 305.021 ~~[216.021]~~. DESIGNATION OF PARTICIPATING SCHOOLS. (a) The state coordinator, in cooperation with the program directors in the counties or cities in which a Communities in Schools program is ~~[was]~~ established on September 1, 1993 ~~[1991]~~, shall designate ~~[not more than 32 elementary schools and 76 secondary schools in those counties]~~ to participate in the program;

(1) the campuses designated on September 1, 1991, for original participation in the program for continuation in the program; and

(2) not more than 135 additional elementary and secondary schools in those counties or cities.

(b) The state coordinator, in cooperation with the program directors in six ~~[four]~~ additional counties or cities designated by the state coordinator, shall designate additional elementary and secondary schools to participate in the Communities in Schools program.

(c) The designation of secondary schools to participate in the Communities in Schools program must be distributed among high schools and junior high or middle schools.

Sec. 305.022 ~~[216.022]~~. PARTICIPATION IN PROGRAM. An elementary or secondary school designated under Section 305.021 ~~[216.021]~~ shall participate in the Communities in Schools program if the number of students enrolled in the school who are at risk of dropping out of school is equal to at least 10 percent of the number of students in average daily attendance at the school, as determined by the agency.

[Sections 305.023-305.030 ~~[216.023-216.030]~~  
reserved for expansion]

#### SUBCHAPTER D. PROGRAM FUNDING

Sec. 305.031 ~~[216.031]~~. DONATIONS TO PROGRAM. (a) The department ~~[commission]~~ may accept a donation of services or money or other property that the commissioner ~~[commission]~~ determines furthers the lawful objectives of the department ~~[commission]~~ in connection with the Communities in Schools program.

(b) Donations must be accepted in an open meeting by ~~[a majority of the voting members of]~~ the commissioner ~~[commission]~~. The donation, with the name of the donor and the purpose of the donation, must be reported in the public records of the department ~~[commission]~~.

SECTION 1.05. Chapter 217, Labor Code, is moved from Subtitle A, Title 4, Labor Code, to Subtitle B of that title, redesignated as Chapter 306, Labor Code, and amended to read as follows:

CHAPTER 306 [217]. PROJECT RIO  
(REINTEGRATION OF OFFENDERS)

Sec. 306.001 [217-001]. DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of Criminal Justice.  
(2) "Institutional division" means the institutional division of the department.

(3) "Project RIO" means the project for reintegration of offenders.

Sec. 306.002 [217-002]. PROJECT RIO. The project for reintegration of offenders is a statewide employment referral program designed to reintegrate into the labor force persons formerly confined in the institutional division.

Sec. 306.003 [217-003]. ADMINISTRATION. The department and the commissioner [commission] shall cooperate to maximize the effectiveness of Project RIO. For that purpose, the commissioner [commission] shall administer the project.

Sec. 306.004 [217-004]. MEMORANDUM OF UNDERSTANDING—ADOPTION. (a) The department and the Texas Department of Workforce Development [commission] shall adopt a memorandum of understanding that establishes the respective responsibilities of each agency and of the divisions within the department.

(b) The commissioner [commission] shall coordinate the development of the memorandum of understanding. The department shall adopt rules as necessary to implement the memorandum and may amend the memorandum and those rules as necessary.

Sec. 306.005 [217-005]. MEMORANDUM OF UNDERSTANDING—CONTENTS. [(a)] The memorandum of understanding must establish the role of:

(1) the institutional division in ascertaining and encouraging an inmate's chances for employment by:

(A) providing vocational and educational assessment for the person while incarcerated in the division;

(B) developing a skills enhancement program for the person while incarcerated, in cooperation with other governmental, educational, and private entities, using available public or private financial resources authorized by statute; and

(C) referring the person on release to the project through the person's parole officer;

(2) the community justice assistance division and the pardons and paroles division of the department in:

(A) encouraging and referring persons to the project; and

(B) ensuring that those persons participate in the project and avail themselves of its services; and

(3) the Texas Department of Workforce Development [commission] in developing and maintaining a statewide network for finding positions of



employment that require the skills possessed by project participants and in helping those participants to secure employment.

~~[(b) The memorandum also must establish the methods by which the commission shall coordinate its efforts under this chapter with the operations of service providers operating under Chapter 301 (Texas Job Training Partnership Act).]~~

Sec. ~~306.006~~ [217.006]. PROJECT DIRECTOR. (a) The commissioner ~~[administrator of the commission]~~ shall designate the director of Project RIO to coordinate the efforts of the affected state agencies and expedite the delivery of services to participants in the project, including prospective employers.

(b) The project director shall:

(1) propose, for adoption by the commissioner ~~[commission]~~, standards and guidelines for the operation of the project;

(2) obtain information from appropriate state agencies and offices affiliated with the project to determine any necessary changes in the project;

(3) disseminate information statewide about the project; and

(4) train ~~[commission]~~ staff of the Texas Department of Workforce Development to assist in the operation of affiliated services.

SECTION 1.06. Subchapter F, Chapter 202, Labor Code, is transferred from Chapter 202, Labor Code, to Subtitle B, Title 4, Labor Code, redesignated as Chapter 307, and amended to read as follows:

#### CHAPTER 307. TEXAS STATE EMPLOYMENT SERVICE

##### [SUBCHAPTER F. EMPLOYMENT SERVICE]

Sec. ~~307.001~~ [202.081]. TEXAS STATE EMPLOYMENT SERVICE.

(a) The Texas State Employment Service is a division of the department ~~[commission]~~.

(b) The department ~~[commission]~~, through the division, shall establish and maintain free public employment offices as necessary to perform the commissioner's ~~[commission's]~~ duties under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.). The number and locations of the public employment offices shall be determined by the commissioner ~~[commission]~~ as necessary for the proper administration of this subtitle.

Sec. ~~307.002~~ [202.082]. EMPLOYMENT SERVICES AGREEMENTS.

(a) To establish and maintain public employment offices under this chapter ~~[subchapter]~~, the commissioner ~~[commission]~~ may enter into an agreement with any political subdivision of the state or with a private or nonprofit organization and, as a part of the agreement, accept money, services, or quarters as a contribution to the employment service account.

(b) To establish and maintain, or assist in the establishment and maintenance of, public employment offices within a county or other political subdivision of this state, the commissioners court of the county or the governing body of the other political subdivision may enter into agreements with the Texas State Employment Service on terms and conditions agreed to by the commissioners court or other governing body and the Texas State Employment Service. The county or other political

subdivision may employ means and appropriate and spend funds as necessary to establish and operate the public employment offices, and may provide, as part of the agreement, payment for:

- (1) the rent of premises;
- (2) services rendered;
- (3) the purchase of equipment; and
- (4) any other purpose considered advisable by the commissioners court or other governing body.

~~[(c) The penalty provisions of this subtitle, including the provisions of Chapters 213 and 214, do not apply to an action or omission under Subsection (b).]~~

SECTION 1.07. Section 203.153, Labor Code, is transferred from Chapter 203, Labor Code, to Subtitle B, Title 4, Labor Code, redesignated as Section 307.003, and amended to read as follows:

Sec. 307.003 ~~[203.153]~~. EMPLOYMENT SERVICE FINANCING. Money received by the state under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.) shall be deposited to the credit of the employment service account in the general revenue ~~[of the administration]~~ fund. The money in the account may be used by the commissioner ~~[commissioner]~~ as provided by this chapter ~~[Subchapter F of Chapter 202]~~ and the Wagner-Peyser Act.

SECTION 1.08. Sections 209.045 and 209.046, Labor Code, are amended to read as follows:

Sec. 209.045. EMPLOYMENT SERVICE REFERRALS TO SUITABLE WORK. The Texas State Employment Service ~~[employment service]~~ shall refer a claimant entitled to extended benefits to suitable work that meets the standards prescribed in Sections 209.046, 209.047(a), and 209.047(b).

Sec. 209.046. EXCEPTIONS TO REQUIREMENT TO ACCEPT OR APPLY FOR SUITABLE WORK. An individual may not be denied extended benefits for failure to accept a job offer of suitable work or apply for suitable work if:

(1) the work was not offered to the individual in writing and was not listed with the Texas State Employment Service ~~[employment service]~~; or

(2) failure to accept or apply for the work would not result in a denial of benefits under the applicable suitable work requirements for a regular benefit claimant in Section 207.008, to the extent that the standards of suitability in that section are not inconsistent with Section 209.047.

SECTION 1.09. Chapter 301, Labor Code, as that chapter existed before the effective date of this Act, is repealed.

## ARTICLE 2. CONFORMING AMENDMENTS—WORKFORCE AND ECONOMIC COMPETITIVENESS ACT

SECTION 2.01. Section 1.04, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.04. DEFINITIONS. In this Act:

(1) "Council" means the Council on Workforce and Economic Competitiveness.

(2) "Department" means the Texas Department of Workforce Development.

(3) "Human resource investment council" means a human resource investment council under the Job Training Reform Amendments Act of 1992 (Pub. L. No. 102-367, Section 701 et seq.).

(4) "Local labor market" means an economically integrated geographical area within which individuals may reside and find employment within a reasonable distance.

(5) ~~[(3)]~~ "Program year" means July 1 to June 30.

(6) ~~[(4)]~~ "Workforce development" includes workforce education programs and workforce training and services.

(7) ~~[(5)]~~ "Workforce education" means articulated career-path programs and the constituent courses of those programs that lead to initial or continuing licensure or certification or associate degree-level accreditation and that are subject to:

(A) initial and ongoing state approval or regional or specialized accreditation;

(B) a formal state evaluation that provides the basis for program continuation or termination;

(C) state accountability and performance standards; and

(D) regional or statewide employer-driven labor market demand documentation.

(8) ~~[(6)]~~ "Workforce training and services" means training and services programs that are not included within the definition of workforce education.

SECTION 2.02. Section 2.01, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.01. CREATION OF COUNCIL. (a) The Council on Workforce and Economic Competitiveness is created ~~[as a state agency]~~ to act as a human resources investment council.

(b) The council is attached for administrative purposes to the General Services Commission.

SECTION 2.03. Section 2.02(b), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The council shall be composed of:

(1) ~~three [the following ex officio voting members:~~

~~[(A) the commissioner of education;~~

~~[(B) the commissioner of higher education;~~

~~[(C) the commissioner of health and human services;~~

~~[(D) the executive director of the Texas Department of Commerce; and~~

~~[(E) the administrator of the Texas Employment Commission;~~

~~[(2) six]~~ voting members appointed by the governor who represent education, ~~[at least]~~ one of whom represents local public education, one of whom represents public postsecondary education, ~~[one of whom]~~

~~represents secondary vocational education;~~] and one of whom represents [postsecondary] vocational education;

(2) ~~five~~ [(3) ~~seven~~] voting members who represent organized labor appointed by the governor based on recommendations made by recognized labor organizations;

(3) ~~five~~ [(4) ~~seven~~] voting members appointed by the governor who represent business and industry, including business members serving on local workforce development boards or private industry councils;

(4) [(5)] one voting member appointed by the governor who represents a community-based organization; and

~~(5) [(6) one voting member appointed by the governor who represents a joint-sponsored apprenticeship program as defined by the United States Department of Labor's Bureau of Apprenticeship and Training appointed from a list of three nominees submitted to the governor by the Apprenticeship and Training Association of Texas;~~

~~[(7) one voting member appointed by the governor who represents a community-based adult literacy organization;~~

~~[(8) one voting member appointed by the governor who represents adult basic and continuing education programs;~~

~~[(9) six voting members appointed by the governor each of whom represents not more than one of the following categories:~~

- ~~[(A) literacy groups;~~
- ~~[(B) local welfare or public housing agencies;~~
- ~~[(C) units of local government;~~
- ~~[(D) adult education organizations;~~
- ~~[(E) teachers or counselors;~~
- ~~[(F) local service delivery organizations;~~
- ~~[(G) special needs populations;~~
- ~~[(H) rural and agricultural organizations;~~
- ~~[(I) proprietary schools;~~
- ~~[(J) members of the state legislature; and~~
- ~~[(K) other groups and organizations; and~~

~~[(10)]~~ the following ex officio voting [nonvoting] members:

- (A) the chair of the State Board of Education;
- (B) the chair of the Texas Higher Education Coordinating Board;
- (C) the presiding officer of the Texas Board of Human Services;
- (D) ~~[the presiding officer of the governing board of the Texas Department of Commerce;~~
- ~~[(E)]~~ the chair of the Texas Employment Commission; and
- ~~(E) the commissioner of workforce development~~
- ~~[(F) the commissioner of the Texas Rehabilitation Commission; and~~
- ~~[(G) the executive director of the Texas Commission for the Blind].~~

SECTION 2.04. Section 2.03(b), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) A member of the council who does not serve as an ex officio member serves a four-year ~~[six-year]~~ term, with one-half ~~[one-third]~~ of those members' terms expiring in each odd-numbered year. An ex officio member shall continue to serve as a member of the council as long as the member continues to serve in the designated office.

SECTION 2.05. Section 2.06(a), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The council shall:

(1) promote the development of a well-educated, highly skilled workforce in this state ~~[through literacy, adult basic education, community education, apprenticeship, and state-of-the-art occupational skills education and training programs];~~

(2) ~~[serve as an]~~ advocate ~~[for]~~ the development of an integrated workforce development system to provide quality services addressing the needs of business and workers in this state;

(3) ~~[promote and assist in the development of an industry-based skills standards and certification system for occupations requiring less than a baccalaureate-level education and training;~~

~~[(4) promote the development of high productivity workplaces in this state;~~

~~[(5) recommend to the governor the components of a school and training-to-work transition process;~~

~~[(6)] develop and recommend to the governor a single strategic plan that establishes the framework for the budgeting and operation of all workforce development programs, including school to work transition programs, administered by agencies represented on the council;~~

(4) ~~[(7)]~~ recommend to the governor the designation or redesignation of workforce development areas for the local planning and delivery of workforce development programs;

(5) ~~[(8)]~~ identify and recommend to the governor incentives to encourage the consolidation, on a regional labor market basis, of:

(A) local boards, councils, and committees; and

(B) service delivery areas authorized under the Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.);

~~(6) [(9) design and implement a state-local planning process for the state's workforce training and services programs;~~

~~[(10)] review local workforce training and services plans and make recommendations to the governor for approval;~~

(7) evaluate ~~[(11) implement a statewide system for evaluating]~~ the effectiveness of all workforce development programs using the administrative records of the state's unemployment compensation program and other sources as appropriate;

(8) ~~[(12)]~~ support research and demonstration projects designed to develop new programs and approaches to service delivery;

(9) design, oversee, ~~[(13) provide for training and professional development for council members, local chief elected officials, workforce development boards and staff, and private industry councils and staff;~~

~~[(14) serve as an advocate at the state and federal levels for the local workforce development boards;~~

~~[(15) establish]~~ and manage ~~[operate]~~ a statewide comprehensive labor market information system that serves employers, students, workers, and state and local planning organizations;

~~(10) [(16)]~~ ensure that occupational skills training is provided in occupations that are currently in demand at the local level and is directed toward high-skill and high-wage jobs;

~~(11) [(17) develop and recommend to the governor and legislature not later than November 15, 1994, a plan for consolidating all workforce development programs in this state;~~

~~[(18)]~~ oversee the operation of the state's workforce development programs to assess the degree to which the programs are effective in achieving state and local goals and objectives;

~~(12) [(19)]~~ develop and recommend to the governor criteria for the establishment of local workforce development boards; and

~~(13) [(20) develop objective criteria for granting waivers allowed under this Act;~~

~~[(21) develop and recommend to the governor a plan to ensure client accessibility to workforce programs that includes a uniform statewide client application system for determining an applicant's eligibility for a workforce program for which state or federal financial assistance is available; and~~

~~[(22)]~~ carry out the federal and state mandated duties and responsibilities for all advisory councils under applicable federal and state workforce development programs.

SECTION 2.06. Section 2.09(d), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) At least annually, the council shall issue an occupation-specific analysis by provider of the job placement performance of each workforce education program for the previous one-year, three-year, and five-year periods to:

(1) each provider of a workforce education program or workforce training and services program;

(2) the Texas Higher Education Coordinating Board for each provider of a workforce education program approved and administered by the board; ~~and~~

(3) each local workforce development board for each provider of workforce training and services within the workforce development area; and

(4) the Texas Department of Workforce Development.

SECTION 2.07. Section 2.10, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.10. SUBCOMMITTEES; TECHNICAL ADVISORY COMMITTEES. (a) The presiding officer of the council may appoint subcommittees consisting of members of the council for any purpose consistent with the duties and responsibilities of the council under this Act.

(b) The following technical advisory committees are created as standing committees to advise the council:

- (1) the apprenticeship and training advisory committee;
- (2) the literacy and adult education advisory committee; and
- (3) the agency administrators advisory committee.

(c) The apprenticeship and training advisory committee shall advise the council on all matters relating to apprenticeship in this state and on the forms, formulas, and administrative procedures to be used in distributing available funds. The advisory committee is composed of the following members:

- (1) two persons employed as training directors or program administrators by apprenticeship committees appointed from a list of names submitted by the Apprenticeship and Training Association of Texas;
- (2) two persons representing bargaining agents for members of trades subject to apprenticeship from a list of names submitted by recognized employee organizations;
- (3) two persons representing employers of members of trades subject to apprenticeship; and
- (4) two persons employed by public schools or state institutions of higher education who teach or immediately supervise preparatory instruction, supplementary instruction, or related instruction courses for apprenticeship programs.

(d) The literacy and adult education advisory committee is composed of:

- (1) four persons representing literacy organizations in this state;
- and
- (2) four persons representing adult basic education programs in this state.

(e) The agency administrators advisory committee is composed of:

- (1) the commissioner of education;
- (2) the commissioner of higher education;
- (3) the commissioner of human services;
- (4) the executive director of the Texas Department of Commerce;
- (5) the administrator of the Texas Employment Commission; and
- (6) the commissioner of workforce development;

(f) The governor shall appoint the members of the apprenticeship and training advisory committee and the literacy and adult education advisory committee.

(g) The presiding officer of the council may appoint other technical advisory committees composed of council members or persons who are not council members, or both members and nonmembers.

SECTION 2.08. Section 2.11, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.11. DISSOLUTION OF STATE ADVISORY COUNCILS AND TRANSFER OF [STATE ADVISORY COUNCIL] RESPONSIBILITIES.

(a) The council shall assume the responsibilities assigned to the state advisory council under the following federal laws:

(1) the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.);

(2) the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. Section 2301 et seq.);

(3) the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);

(4) the Adult Education Act (20 U.S.C. Section 1201 et seq.);

(5) the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.);

(6) Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 681 et seq.);

(7) the employment program established under Section 6(d)(4), Food Stamp Act of 1977 (7 U.S.C. Section 2015(d)(4)); and

(8) the National Literacy Act of 1991 (Pub. L. 102-73 et seq.).

(b) The following state advisory councils, boards, and committees are dissolved and the council shall assume the responsibilities formerly exercised by the following state advisory councils, boards, and committees:

(1) the State Job Training Coordinating Council;

(2) the Texas Council on Vocational Education;

(3) the technical advisory committee to the State Occupational Information Coordinating Council;

(4) the Texas Literacy Council; and

(5) the Apprenticeship and Training Advisory Committee.

SECTION 2.09. Section 2.12, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.12. FISCAL AGENT. The General Services Commission shall [council may designate another state agency to] serve as the council's fiscal agent [if the designated agent agrees to the designation].

SECTION 2.10. Sections 2.13(c) and (e), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) The executive director shall ~~may~~ adopt the administrative and personnel procedures of the council's fiscal agent rather than adopting new procedures for the council.

(e) The executive director of the State Occupational Information Coordinating Council shall be an employee of the council ~~report to the executive director of the council and shall provide labor market information, information relevant to workforce program evaluation, and technical assistance to the council and its staff as requested].~~ The council ~~[executive director of the State Occupational Information Coordinating Council]~~ may enter into contracts for products and services with state agency members of the council ~~[State Occupational Information Coordinating Council membership agencies]~~ and other organizations if consistent with the state strategic plan.

SECTION 2.11. Section 2.17(d), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) State agencies that are responsible for the administration of human resources and workforce development programs in this state shall



implement the recommendations if the recommendations do not violate an existing federal or state law[, regulation, or rule].

SECTION 2.12. Section 2.18, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.18. FUNDING. (a) Federal funding for the operation of the council shall be allocated according to federal requirements.

(b) ~~[The council shall develop a budget to carry out the council's duties and responsibilities under this Act. The budget must be submitted to the governor and the Legislative Budget Board for approval. The budget shall identify funds appropriated for the biennium ending August 31, 1995, for planning and evaluation of a workforce development program administered by an agency represented on the council and shall recommend the transfer of those funds to the functions being assumed by the council.]~~

~~[(c)]~~ A state agency represented on the council shall provide funds for the support of the council in proportion to the agency's financial participation in the workforce development system.

SECTION 2.13. Section 4.01, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.01. CREATION OF LOCAL WORKFORCE DEVELOPMENT BOARDS. (a) The chief elected officials in a workforce development area designated by the governor under Section 3.01 of this Act may form, in accordance with rules established by the commissioner of workforce development [council], a local workforce development board to plan and oversee the delivery of all workforce training and services programs and evaluate all workforce development programs in the workforce development area. The authority granted under this subsection does not give a local workforce development board any direct authority or control over workforce funds and programs in its workforce development area, other than programs funded through that board.

(b) Before a local workforce development board may be created, at least three-fourths of the chief elected officials in the workforce development area who represent units of general local government must agree to the creation of the board, including all of the chief elected officials who represent units of general local government having populations of at least 200,000. The elected officials agreeing to the creation of the board must represent at least 75 percent of the population of the workforce development area.

(c) On agreement regarding the formation of a local workforce development board, the chief elected officials shall reduce the agreement to writing. The local government agreement shall include:

- (1) the purpose for the agreement;
- (2) the process that will be used to select the chief elected official who will act on behalf of the other chief elected officials;
- (3) the process that will be followed to keep those chief elected officials informed regarding local workforce development activities;

(4) the initial size of the local workforce development board;  
(5) how resources allocated to the local workforce development area will be shared among the parties to the agreement;

(6) ~~[(4)]~~ the process to be used to appoint the board members, which must be consistent with applicable federal and state laws; and

(7) ~~[(5)]~~ the terms of office of the members of the board.

(d) ~~[(e)]~~ The chief elected officials shall consider the views of all affected local organizations, including private industry councils and quality workforce planning committees, before making a final decision regarding the formation of a local workforce development board.

(e) ~~[(d)]~~ None of the powers and duties granted a workforce development board under this Act may be exercised in a workforce development area until the chief elected officials in that area reach an agreement providing for the establishment of a local workforce development board as provided by Subsection (b) of this section and the board is certified by the governor.

(f) ~~[(e)]~~ A private industry council in an area in which a local workforce development board is not created or in which the chief elective officers are unable to negotiate the establishment of a local workforce development board may not exercise any of the powers granted a local workforce development board by this Act, except for a power granted under the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.).

(g) A member or former member of a local workforce development board may not be held personally liable for any claim, damage, loss, or repayment obligation of federal or state funds that arises from this Act unless the act or omission that causes the claim, damage, loss, or repayment obligation constitutes official misconduct on the part of the board member, wilful disregard of the requirements of this Act on the part of the board member, or gross negligence on the part of the board member.

SECTION 2.14. Section 4.04, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (c), and (d) and by adding Subsection (f) to read as follows:

(a) A board is directly responsible and accountable to the department ~~[council]~~ for the strategic planning and oversight of all workforce training and services and the evaluation of all workforce development programs in the workforce development area. A workforce development board shall ensure effective outcomes consistent with statewide goals, objectives, and performance standards approved by the governor. The department ~~[council]~~ shall assist workforce development boards in designing effective measures to accomplish this responsibility. A board is directly responsible to the department for the operational planning and administration of all workforce training and services funded through the department to the local area.

(c) A board shall:

(1) serve as a single point of contact for local business to communicate their skill needs and influence the direction of all workforce development programs in the workforce development area;

(2) develop a local plan for addressing the workforce development needs of the workforce development area that:

(A) is responsive to the goals, objectives, and performance standards established by the governor;

(B) targets services to meet local needs, including the identification of industries and employers likely to employ workers who complete job training programs; and

(C) ensures that the workforce development system, including the educational system, has the flexibility to meet the needs of local businesses;

(3) designate the board or some other entity as the board's fiscal agent to be responsible and accountable for the management of all workforce development funds available to the board;

(4) create local career [~~workforce~~] development centers as established in Article 5 of this Act;

(5) review plans for workforce education to ensure that the plans address the needs of local businesses and recommend changes in the delivery of education services as appropriate;

(6) assume the functions and responsibilities of local career [~~workforce~~] development advisory boards, councils, and committees authorized by federal or state laws, including private industry councils, quality workforce planning committees, job service employer committees, and local general vocational program advisory committees;

(7) monitor and evaluate the effectiveness of the career [~~workforce~~] development centers, state agencies and other contractors providing workforce training and services, and vocational and technical education programs operated by local education agencies and institutions of higher education to ensure that performance is consistent with state and local goals and objectives; and

(8) promote cooperation and coordination among public organizations, community organizations, and private business providing workforce development services[~~;~~ and

~~[(9) review applications as consistent with rules developed by the Texas Department of Commerce for funds under the smart jobs fund program under Subchapter J, Chapter 481, Government Code].~~

(d) The board may provide relevant labor market information and information regarding the availability of existing workforce development programs to the department in performing the board's duties under ~~[Subsection (c)(9) of]~~ this section.

(f) The chief elected officials designated under Section 4.01(b) of this Act shall enter into a partnership agreement with the local workforce development board to select the grant recipient and the administrative entity for the local workforce development area and to determine procedures for the development of the local workforce development plan.

SECTION 2.15. Section 4.05, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.05. LOCAL PLAN. (a) A local workforce development board shall develop a single plan that includes the components specified in this section.

(b) The plan must include a strategic component that:

(1) assesses the labor market needs of the local workforce development area;

(2) identifies existing workforce development programs;

(3) evaluates the effectiveness of existing programs and services;

and

(4) sets broad goals and objectives for all workforce development programs in the local area consistent with statewide goals, objectives, and performance standards.

(c) The plan must include an operational component that specifies how all of the resources directly available to the local workforce development area from the department will be used to achieve the goals and objectives of the plan for the area. At a minimum, this component must establish:

(1) the goals, objectives, and performance measures to be used in overseeing and evaluating the operation of all workforce training and services;

(2) the segments of the population targeted for various services;

(3) the mix of services to be provided and how they are to be provided; and

(4) the structure of the local service delivery system.

(d) Program resources included in the operational component are those under [for the delivery of all workforce training and services in the board's service area under the following programs]:

(1) [the Texas Job Training Partnership Act (Article 4413(52); Vernon's Texas Civil Statutes);

[(2)] postsecondary vocational and technical job training programs that are not part of approved courses or programs that lead to licensing, certification, or an associate degree under Chapters 61, 108, 130, and 135, and Subchapter E, Chapter 88, Education Code;

(2) [(3)] adult education programs under Section 11.18, Education Code;

(3) [(4)] apprenticeship programs under Chapter 33, Education Code;

(4) [(5)] the trade adjustment assistance program under Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);

(5) [(6)] the senior citizens employment program under Chapter 101, Human Resources Code;

(6) Subtitle A, Title 4, Labor Code [(7) the Texas Unemployment Compensation Act (Article 5221b-1 et seq.; Vernon's Texas Civil Statutes)];

(7) [(8)] literacy funds available to the state under the National Literacy Act of 1991 (Pub. L. 102-73 et seq.);

(8) [(9)] the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);

(9) [(10)] the job opportunities and basic skills program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682); and

(10) [(11)] the food stamp employment and training program authorized under 7 U.S.C. Section 2015(d).

- (e) ~~(b)~~ A local plan shall identify:
- (1) goals, objectives, and performance measures;
  - (2) the population to be served;
  - (3) the mix of services to be provided;
  - (4) the service providers; and
  - (5) the structure of the delivery system.

SECTION 2.16. Sections 4.06(a) and (f), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A board shall review, verify, modify, and use local labor market information developed through the state's ~~[in conjunction with the council shall establish and operate an automated, interactive employer-driven]~~ labor market information system to identify occupation-specific labor demand in each workforce development area.

(f) A public community college shall promptly provide workforce training and services that are requested:

(1) by the workforce development board based on the ~~[board's]~~ labor market ~~[demand]~~ information system available for the area;

(2) by employers located in the college's taxing district when the request is presented directly to the college by the employers or through the workforce development board; or

(3) as part of an economic development incentive package designed to attract or retain an employer, including a package offered under the smart jobs fund program under Subchapter J, Chapter 481, Government Code.

SECTION 2.17. Section 4.08(a), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A board shall establish a budget for the board that must be included in the local workforce development plan submitted to the department ~~[Council on Workforce and Economic Competitiveness]~~. A board may employ professional, technical, and support staff as necessary to carry out its strategic planning, oversight, and evaluation functions. A board's staff shall be separate from and independent of any organization providing workforce education or workforce training and services in the workforce development area.

SECTION 2.18. Article 5, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended to read as follows:

#### ARTICLE 5. LOCAL DELIVERY SYSTEM

Sec. 5.01. The local workforce development system is composed of two major components as follows:

(1) an employer services component that provides labor market information and services and employment and other services as appropriate to local employers; and

(2) an integrated service delivery system composed of a network of career development centers serving the people of this state based on a one-stop for service approach and supported by electronic access to comprehensive labor market information.

**Sec. 5.02. CAREER [~~WORKFORCE~~] DEVELOPMENT CENTERS.** (a) A local workforce development board shall establish career [~~workforce~~] development centers accessible to students and [~~;~~] workers[~~;~~ ~~and employers~~] throughout the workforce development area. Each center shall provide access to information and services available in the workforce development area and shall address the individual needs of students and [~~;~~] workers[~~;~~ ~~and employers~~]. The services [~~available at a center~~] shall be tailored to meet individual needs and shall include the following:

(1) labor market information, including [~~the skills of the area workforce;~~] available job openings[~~;~~] and the education and [~~;~~] training[~~;~~ ~~and employment~~] opportunities in the local area, in the state, and as feasible, in the nation;

(2) a common intake and eligibility determination process for all workforce training [~~development programs~~] and services;

(3) independent assessment of individual needs and the development of an individual service strategy;

(4) centralized and continuous case management and counseling;

(5) individual referral for services including basic education, classroom skills training, on-the-job training, and customized training; and

(6) supportive services, including child care, student loans, and other forms of financial assistance required to participate in and complete training.

(b) Except as provided by Subsection (c) of this section, a person that provides one-stop services may not also provide developmental services, such as basic education and skills training.

(c) The commissioner may develop a waiver process for a person subject to Subsection (b) of this section. The request for a waiver must include a detailed justification based on the lack of an existing qualified alternative for delivery of developmental services in the applicable workforce development area.

(d) The Texas Employment Commission, in cooperation with local workforce development boards, shall provide for the filing of unemployment insurance claims through career development centers in each local workforce development area.

**Sec. 5.03. [~~Sec. 5.02.~~] RIGHT TO KNOW.** A local career [~~workforce~~] development center shall provide each person, before the person participates in a vocational or technical training program, a written document that informs the person of current employment prospects, [~~and~~] the current wage level for a person who completes the vocational or technical training program in which the person is considering participating, and the most recent information available on the performance of institutions providing that training in the local workforce development area.

SECTION 2.19. The Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), is amended by adding Article 7 to read as follows:

#### ARTICLE 7. SKILL STANDARDS BOARD

**Sec. 7.01. TEXAS SKILL STANDARDS BOARD.** (a) The Texas Skill Standards Board is created as an advisory board to the council and the governor on the development of a statewide system of industry-defined

and industry-recognized skill standards and credentials for all major skilled occupations that:

(1) provide strong employment and earnings opportunities in this state; and

(2) require less than a baccalaureate degree.

(b) The board is composed of 11 members appointed by and serving at the pleasure of the governor. The board consists of the following members:

(1) seven members representing business, two of whom must be from business entities that employ fewer than 50 employees;

(2) two members representing labor;

(3) one member representing secondary education; and

(4) one member representing postsecondary education.

(c) The governor shall appoint the presiding officer of the board from the members representing business.

(d) The board shall:

(1) validate nationally established skill standards to guide curriculum development, training, assessment, and certification of workforce skills;

(2) convene industry groups to develop skill standards and certification procedures for industries and occupations in which standards have not been established or adopted;

(3) review standards developed by other states and nations and enter into agreements for mutual recognition of credentials to enhance portability of skills; and

(4) promote the use of standards and credentials among employers.

(e) The board shall meet at the call of the presiding officer as often as necessary to accomplish its work.

(f) A member of the board is not entitled to compensation for service on the board but is entitled to reimbursement for reasonable expenses incurred in performing board duties, subject to any applicable limitation in the General Appropriations Act.

(g) The department shall provide staff support for the board as necessary.

(h) The board shall report periodically to the governor and shall provide annual reports to the governor, the commissioner, and the legislature.

(i) Article 6252-33, Revised Statutes, does not apply to the board.

SECTION 2.20. The following laws are repealed:

(1) Section 2.08, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes);

(2) Section 2.14, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes);

(3) Section 2.16, Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes); and

(4) Section 2.17(f), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes).

SECTION 2.21. In making appointments to the Council on Workforce and Economic Competitiveness, as that council is reestablished under

Section 2.02(b), Workforce and Economic Competitiveness Act (Article 5190.7a, Vernon's Texas Civil Statutes), as amended by this Act, the governor shall reappoint to the council at least seven of the members who served on that council in a non-ex officio capacity on the day before the effective date of this Act.

ARTICLE 3. CONFORMING AMENDMENTS—LABOR CODE

SECTION 3.01. Section 81.001, Labor Code, is amended to read as follows:

Sec. 81.001. DEFINITIONS. In this chapter:

(1) "Clearinghouse" means the Work and Family Policies Clearinghouse.

(2) [~~"Commission" means the Texas Employment Commission.~~

~~[(3)]~~ "Committee" means the Work and Family Policies Advisory Committee.

(3) "Department" means the Texas Department of Workforce Development.

SECTION 3.02. Sections 81.002(a) and (b), Labor Code, are amended to read as follows:

(a) The Work and Family Policies Advisory Committee shall advise the department [~~commission~~] on:

(1) dependent care and other employment-related family initiatives for public and private employers and employees;

(2) options for including dependent care as a state employee benefit; and

(3) any other employment-related family issues.

(b) The commissioner of workforce development [~~administrator of the commission~~] shall appoint the members of the committee, to be composed of not more than 12 members. The committee must be composed of corporate, consumer, and provider representatives from the public and private sectors.

SECTION 3.03. Section 81.003, Labor Code, is amended to read as follows:

Sec. 81.003. WORK AND FAMILY POLICIES CLEARINGHOUSE. The Work and Family Policies Clearinghouse is within the department [~~commission~~].

SECTION 3.04. Section 81.006, Labor Code, is amended to read as follows:

Sec. 81.006. WORK AND FAMILY POLICIES ACCOUNT [~~FUND~~].

(a) The work and family policies account [~~fund~~] is in the general revenue fund [~~state treasury~~]. Money in the account [~~fund~~] is derived from fees deposited as required by Section 191.0045, Health and Safety Code, and may be used only for:

(1) the operation of the clearinghouse;

(2) research conducted by the clearinghouse under Section 81.004;

and

(3) other uses specifically authorized by law.

(b) The clearinghouse shall administer the work and family policies account [~~fund~~].



SECTION 3.05. Section 81.007, Labor Code, is amended to read as follows:

Sec. 81.007. RULES. The commissioner of workforce development [~~commission~~] by rule may adopt procedures to implement functions under Sections 81.004, 81.005, and 81.006(b). In adopting rules under this section, the commissioner [~~commission~~] shall consider the recommendations of the clearinghouse staff.

SECTION 3.06. Section 81.008(b), Labor Code, is amended to read as follows:

(b) The department [~~commission~~] may accept a donation of money, services, or property only if the commissioner of workforce development [~~commission~~] determines that the donation furthers the lawful purposes and objectives of the department [~~commission~~] under this chapter [~~and the donation is accepted in an open meeting by a majority of the voting members of the commission~~]. The donation must be reported in the public records of the department [~~commission~~] with the name of the donor and the purpose of the donation.

#### ARTICLE 4. CONFORMING AMENDMENTS—OTHER LAWS

SECTION 4.01. Section 11.18(b), Education Code, as amended by Chapter 463, Acts of the 71st Legislature, Regular Session, 1989, and Sections 11.18(c)-(e), Education Code, are amended to read as follows:

(b) The Texas Department of Workforce Development [~~Central Education Agency~~] shall:

(1) manage this program with adequate staffing to develop, administer, and support a comprehensive statewide adult education program and coordinate related federal and state programs for education and training of adults;

(2) develop, implement, and regulate a comprehensive statewide program for community level education services to meet the special needs of adults;

(3) develop the mechanism and guidelines for coordination of comprehensive adult education and related skill training services for adults with other agencies, both public and private, in planning, developing, and implementing related programs, including community education programs;

(4) administer all state and federal funds for adult education and related skill training in Texas, except in programs where another entity is specifically authorized to do so under other law;

(5) prescribe and administer standards and accrediting policies for adult education;

(6) prescribe and administer rules and regulations for teacher certification for adult education; and

(7) accept and administer grants, gifts, services, and funds from available sources for use in adult education.

(c) Adult education programs shall be provided by public school districts, public junior colleges, and public universities approved in accordance with state statute and the regulations and standards adopted by the Texas Department of Workforce Development in conjunction with the State Board of Education. The programs shall be designed to meet the

education and training needs of adults to the extent possible within available public and private resources. Bilingual education may be the method of instruction for students who do not function satisfactorily in English whenever it is appropriate for their optimum development.

(d) The Texas Department of Workforce Development [~~State Board of Education~~] may establish or designate an adult education advisory committee composed of no more than 21 members representing public and private nonprofit education, business, labor, minority groups, and the general public for the purpose of advising the department [~~board~~] on needs, priorities, and standards of adult education programs conducted in accordance with this section of the Texas Education Code.

(e) Funds shall be appropriated to implement statewide adult basic education, adult bilingual education, high school equivalency, and high school credit programs to eliminate illiteracy in Texas and to implement and support a statewide program to meet the total range of adult needs for adult education, related skill training, and pilot programs to demonstrate the effectiveness of the community education concept. An additional sum of money may be appropriated to the Texas Department of Workforce Development [~~Commerce~~] for the purpose of skill training in direct support of industrial expansion and start-up, and those locations, industries, and occupations designated by the Texas Department of Workforce Development [~~Commerce~~], when such training is also in support of the basic purposes of this section. To fulfill the basic purposes of this section, an additional sum of money may be appropriated for skill training that is conducted to support the expansion of civilian employment opportunities on United States military reservations. The Central Education Agency, in conjunction with the commissioner of workforce development [~~Texas Department of Commerce~~], may adopt rules to administer such skill training programs for which the Central Education Agency is responsible, and the commissioner of workforce development [~~Texas Department of Commerce~~] may adopt rules to administer such skill training programs for which the Texas Department of Workforce Development [it] is responsible.

SECTION 4.02. Section 32.11(5), Education Code, is amended to read as follows:

(5) "Administrator" means the commissioner of workforce development [~~State Commissioner of Education~~] or a person, knowledgeable in the administration of regulating proprietary schools, designated by that commissioner [~~the Commissioner~~] to administer the provisions of this chapter.

SECTION 4.03. Section 32.12(c), Education Code, is amended to read as follows:

(c) If a State agency that issues a license or other authorization for the practice of an occupation elects not to regulate or approve course hours that exceed the minimum education requirements for the issuance of the license or other authorization, the licensing agency shall enter into a memorandum of understanding with the Texas Department of Workforce Development [~~Central Education Agency~~] for the regulation of those excess

course hours under this chapter. Any course taught under a letter of approval or other written authorization issued by the licensing agency before the effective date of the memorandum is authorized under State law until the course is reviewed by the Texas Department of Workforce Development [~~Central Education Agency~~]. The licensing agency may terminate the memorandum of understanding on notice to the Texas Department of Workforce Development [~~Central Education Agency~~].

SECTION 4.04. Section 32.21, Education Code, is amended to read as follows:

Sec. 32.21. WORKFORCE DEVELOPMENT DEPARTMENT [~~CENTRAL EDUCATION AGENCY~~]. (a) The Texas Department of Workforce Development [~~Central Education Agency~~] shall exercise jurisdiction and control of the system of schools, and it shall be the duty of the commissioner of workforce development [~~Commissioner of Education~~] to carry out supervision of the provisions of this chapter, and to enforce minimum standards for approval of schools under the operating regulations and policies hereinafter set forth and as may from time to time be adopted pursuant to the provisions of this chapter.

(b) The Texas Department of Workforce Development [~~Central Education Agency~~] shall prepare a comparison of the cost to a student of courses of instruction or training programs at proprietary schools to the cost to a student of similar courses or programs at schools that are exempt from this chapter under Section 32.12 of this code.

(c) The Texas Department of Workforce Development [~~agency~~] may consult a recognized expert in a field of study for assistance in determining minimum program standards under this chapter for that field.

(d) The Texas Department of Workforce Development [~~Central Education Agency~~] and the Texas Higher Education Coordinating Board shall adopt a memorandum of understanding which develops guidelines for coordinating the regulation of proprietary schools and courses that are subject to Sections 61.301 through 61.317 and Chapter 32 of this code. The memorandum shall include provisions which:

(1) clearly identify the responsibilities of each agency in regulating proprietary schools;

(2) ensure that the rules adopted by both agencies pursuant to the memorandum of understanding are not duplicative or in conflict; and

(3) establish procedures for ensuring that information affecting the proprietary school regulatory activities of both agencies is shared between the agencies.

SECTION 4.05. Section 32.24, Education Code, is amended to read as follows:

Sec. 32.24. DUTIES OF WORKFORCE DEVELOPMENT DEPARTMENT AND COMMISSIONER. [~~ADMINISTRATOR. (a)~~] The Texas Department of Workforce Development [~~administrator~~] shall carry out the policies of this chapter and enforce the rules and regulations adopted by the commissioner of workforce development [~~State Board of Education~~]. The commissioner of workforce development [~~He~~] shall also certify the names of those schools meeting the requirements for a certificate of approval.

~~[(b) The administrator may adopt and enforce temporary rules and regulations pursuant to the provisions of this chapter but the temporary rules and regulations are valid only until the next meeting of the State Board of Education.]~~

SECTION 4.06. Section 32.25, Education Code, is amended to read as follows:

Sec. 32.25. MEMORANDUM OF UNDERSTANDING FOR REGULATION OF PROPRIETARY SCHOOLS. (a) The Texas Department of Workforce Development ~~[Central Education Agency]~~ shall develop, in consultation with the Texas Guaranteed Student Loan Corporation and each state agency that regulates proprietary schools in this state, a comprehensive strategy to reduce default rates at the regulated proprietary schools and to improve the overall quality of the programs operated by these schools.

(b) The Texas Department of Workforce Development ~~[Central Education Agency]~~ shall execute a memorandum of understanding outlining the strategy with the corporation and each state agency regulating proprietary schools and shall adopt rules to carry out its duties under this section. The Texas Guaranteed Student Loan Corporation shall adopt the memorandum of understanding as procedures of the corporation, and each agency by rule shall adopt the memorandum of understanding.

(c) The memorandum of understanding shall:

(1) require the development and monitoring of indicators that identify schools that have excessive loan default rates, poor program performance, or both;

(2) require the sharing of specific information relating to the indicators between the Texas Department of Workforce Development ~~[Central Education Agency]~~ and the Texas Guaranteed Student Loan Corporation or other agency; and

(3) require the application of specific sanctions by the Texas Department of Workforce Development ~~[Central Education Agency]~~ or by the Texas Guaranteed Student Loan Corporation or other agency, as appropriate, to lower the default rates, improve program performance, or both.

(d) If the Texas Department of Workforce Development ~~[Central Education Agency]~~ enters a memorandum of understanding with the Texas Guaranteed Student Loan Corporation related to the regulation of proprietary schools, the department ~~[agency]~~ may require each proprietary school governed by this chapter to provide information to the department ~~[agency]~~ that is necessary for the purposes of the memorandum of understanding.

SECTION 4.07. Section 32.32, Education Code, is amended to read as follows:

Sec. 32.32. APPLICATION FOR CERTIFICATE OF APPROVAL. Every proprietary school desiring to operate in the State of Texas or do business in the State shall make written application to the administrator for a certificate of approval. Such application shall be verified, be in such form as may be prescribed by the Texas Department of Workforce

Development [~~State Board of Education~~], and shall furnish the administrator such information as the commissioner of workforce development [he] may require.

SECTION 4.08. Section 32.321(a), Education Code, is amended to read as follows:

(a) The commissioner of workforce development [~~State Board of Education~~] after consultation with the Proprietary School Advisory Commission may establish rules that waive, alter, suspend, or replace any of the following provisions governing small proprietary schools:

(1) the fee schedule authorized under Section 32.71 of this code, provided that fees under a fee schedule established by rule may not be less than the reasonable administrative cost for regulation or more than the amount that a small proprietary school would otherwise pay if it were not classified as a small proprietary school;

(2) participation in the proprietary school tuition protection fund required by Section 32.91 of this code;

(3) the refund policy provisions of Section 32.39 of this code;

(4) the bonding requirements of Section 32.38 of this code;

(5) the examination of a school for compliance under Section 32.34(f) of this code;

(6) the reporting requirements of Section 32.33(15) [~~32.33(e)~~] of this code; and

(7) the term for which a certificate of approval is issued under Section 32.34(b) of this code, provided that a rule adopted under this section may not provide for a term that exceeds three years or is less than one year.

SECTION 4.09. Section 32.33, Education Code, is amended to read as follows:

Sec. 32.33. CRITERIA. The administrator may approve the application of a [~~such~~] proprietary school if [~~when~~] the school is found, on [~~upon~~] investigation at the premises of the school, to have met the following criteria:

(1) ~~the~~ [~~(a) The~~] courses, curriculum, and instruction are of such quality, content, and length as may reasonably and adequately achieve the stated objective for which the courses, curriculum or instruction are offered; provided that before [~~Before~~] a school conducts a course of instruction in court reporting, the school must produce evidence that the school has obtained approval for the curriculum from the Court Reporters Certification Board;[:]

(2) ~~the~~ [~~(b) There is in the~~] school has adequate space, equipment, instructional material and instructor personnel to provide training of good quality;[:]

(3) educational [~~(c) Educational~~] and experience qualifications of directors, administrators and instructors are adequate;[:]

(4) ~~the~~ [~~(d) The~~] school maintains a written record of the previous education and training of the applicant student and clearly indicates that appropriate credit has been given by the school for previous education and

training, with the new training period shortened where warranted through use of appropriate skills or achievement tests and the student so notified;[:]

(5) a ~~[(e) A]~~ copy of the following information is furnished to a student before enrollment:

(A) a course outline;

(B) a schedule of tuition, fees, ~~[refund policy;]~~ and other charges;

(C) a statement of the school's refund policy;

(D) a copy of regulations relating ~~[pertaining]~~ to absence, grading policy, ~~[and]~~ rules of operation and conduct, ~~and~~ ~~[- regulations pertaining to]~~ incomplete grades;

(E) the name, mailing address, and telephone number of the Texas Department of Workforce Development ~~[Central Education Agency]~~ for the purpose of directing complaints to the ~~department~~ ~~[agency];~~

(F) the current rates of job placement and employment of students issued a certificate of completion; and

(G) notification of the availability of the cost comparison information prepared under Section 32.21(b) of this code through the Texas Department of Workforce Development; ~~[Central Education Agency will be furnished the student prior to enrollment.]~~

(6) except ~~[(f) Except]~~ as provided by Section 32.40 of this code, on completion of training, the student is given a certificate by the school indicating the course and that training was satisfactorily completed;[:]

(7) adequate ~~[(g) Adequate]~~ records as prescribed by the administrator are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress and conduct are enforced;[:]

(8) the ~~[(h) The]~~ school complies with all local, city, county, municipal, state and federal regulations, such as fire, building and sanitation codes, and provides ~~[- The administrator may require such]~~ evidence of compliance to the administrator as considered ~~[is deemed]~~ necessary by the administrator;[:]

(9) the ~~[(i) The]~~ school is financially sound and capable of fulfilling its commitments for training;[:]

(10) the ~~[(j) The]~~ school's administrators, directors, owners, and instructors are of good reputation and character;[:]

(11) the ~~[(k) The]~~ school has, maintains, and publishes in its catalogue and enrollment contract[:] the proper policy for the refund of the unused portion of tuition, fees, and other charges in the event the student enrolled by the school fails to take the course or withdraws or is discontinued therefrom at any time prior to completion;[:]

(12) the ~~[(l) The]~~ school does not utilize erroneous or misleading advertising, either by actual statement, omission, or intimation as determined by the Texas Department of Workforce Development; ~~[State Board of Education.]~~

(13) additional ~~[(m) Such additional]~~ criteria as ~~[may be]~~ required by the Texas Department of Workforce Development; ~~[State Board of Education.]~~

(14) the ~~[(n)-The]~~ school does not use a name like or similar to an existing tax supported school in the same area;[:]

(15) the ~~[(o)-The]~~ school furnishes to the Texas Department of Workforce Development ~~[Central Education Agency]~~ the current rates of students who receive a certificate of completion and of job placement and employment of students issued a certificate of completion;[:]

(16) the ~~[(p)-The]~~ school furnishes to the Texas Department of Workforce Development ~~[Central Education Agency]~~ for approval or disapproval student admission requirements for each course or program offered by the school;[:]

(17) the ~~[(q)-The]~~ school furnishes to the Texas Department of Workforce Development ~~[Central Education Agency]~~ for approval or disapproval the course hour lengths and curriculum content for each course offered by the school; and[:]

(18) the ~~[(r)-The]~~ school does not owe a civil penalty under Section 32.611 of this code.

SECTION 4.10. Sections 32.34(a) and (d), Education Code, are amended to read as follows:

(a) The administrator, upon review of an application for a certificate of approval duly submitted in accordance with the provisions of Section 32.32 and meeting the requirements of Section 32.33 of this chapter, shall issue a certificate of approval to the applicant school. The certificate of approval shall be in a form ~~[recommended by the commission and]~~ approved by the commissioner of workforce development ~~[State Board of Education]~~ and shall state in a clear and conspicuous manner at least the following information:

- (1) date of issuance, effective date, and term of approval;
- (2) correct name and address of the school;
- (3) authority for approval and conditions of approval, if any, referring specifically to the approved catalogue or bulletin published by the school;

(4) signature of the administrator or such person as may have been designated by the commissioner of workforce development ~~[him]~~ to administer the provisions of this chapter; and

(5) any other fair and reasonable representations that are consistent with this chapter and deemed necessary by the administrator.

(d) At least thirty (30) days prior to expiration of a certificate of approval, the school shall forward to the administrator an application for renewal. The administrator shall reexamine the school at the premises of the school and either renew or cancel the school's certificate of approval. If a school fails to file a complete application for renewal at least thirty (30) days before the expiration date of the certificate of approval, the school, as a condition of renewal, must pay, in addition to the annual renewal fee, a late renewal fee in an amount established by rule by the commissioner of workforce development ~~[State Board of Education rule]~~ of at least \$100.

SECTION 4.11. Section 32.38(e), Education Code, is amended to read as follows:

(e) The administrator, for good cause shown, ~~[as recommended by the commission and approved by the State Board of Education,]~~ may waive

and suspend the requirements set forth in Subsections (a) and (c) of this Section with respect to schools operating wholly or in part under a federal grant where no tuition fee is charged to the student.

SECTION 4.12. Sections 32.39(c) and (e), Education Code, are amended to read as follows:

(c) In lieu of the refund policy herein set forth, for programs of instruction not regularly offered to the general public, the Texas Department of Workforce Development ~~[State Board of Education]~~ may, for good cause shown, amend, modify, substitute and/or alter the terms of such policy due to the specialized nature and objective of the subject school's course of instruction.

(e) If a refund is not made within the period required by this section, the school shall pay a penalty. If the refund is made to a lending institution, the penalty shall also be paid to that institution and applied against the student's loan. The commissioner of workforce development ~~[education]~~ annually shall establish the level of the penalty at a level sufficient to provide a deterrent to the retention of student funds. The commissioner of workforce development ~~[Central Education Agency]~~ may exempt a school from the payment of the penalty if the school makes a good faith effort to refund the tuition, fees, and other charges but is unable to locate the student. The school shall provide to the commissioner of workforce development ~~[the agency]~~ on request documentation of the effort to locate the student.

SECTION 4.13. Section 32.401(b), Education Code, is amended to read as follows:

(b) A proprietary school may offer an applied technology degree, an occupational studies degree, or other degree approved by the Texas Department of Workforce Development in conjunction with the Central Education Agency. The department may not ~~[Central Education Agency shall have no authority to]~~ approve a degree title that uses "associate," "bachelor's," "master's," or "doctor's" in the title and shall consult with the Texas Higher Education Coordinating Board to ensure that the titles of degrees approved by the department ~~[agency]~~ are distinctly different from the titles of degrees approved by the board.

SECTION 4.14. Section 32.402(d), Education Code, is amended to read as follows:

(d) The authority of a school to operate under a small proprietary school certificate of approval terminates on the final determination of issuance or denial of an initial certificate of approval. If a school fails to file a complete application within the period required by Subsection (b) of this section, the school, as a condition of issuance, must pay a late fee in an amount established by rule by the commissioner of workforce development ~~[State Board of Education rule]~~ of at least \$100.

SECTION 4.15. Section 32.42(d), Education Code, is amended to read as follows:

(d) Upon the filing of the lawsuit, citation shall be served upon the administrator. Whereupon, the administrator shall cause to be made a complete record of all proceedings had before the administrator, and shall



certify a copy of the proceedings to the Court. Trial before the Court shall be upon the basis of the record made before the administrator, and the Court shall make its decision based upon the record. The administrator's decision shall be affirmed by the Court if the Court finds substantial evidence in the record to justify the decision, unless the Court finds the order to be:

- (1) arbitrary and capricious, or
- (2) in violation of the Constitution or laws of the State of Texas,

or

(3) in violation of rules adopted by the commissioner of workforce development under this chapter [~~and regulations promulgated by the State Board of Education pursuant to the provisions of the Act~~].

SECTION 4.16. Section 32.612, Education Code, is amended to read as follows:

Sec. 32.612. COMPETITIVE BIDDING; ADVERTISING. The commissioner of workforce development [~~State Board of Education~~] may not adopt rules to restrict competitive bidding or advertising by a proprietary school except to prohibit false, misleading, or deceptive competitive bidding or advertising practices. Those rules may not restrict:

- (1) the use of an advertising medium;
- (2) the size or duration of an advertisement; or
- (3) advertisement under a trade name.

SECTION 4.17. Section 32.63(b), Education Code, is amended to read as follows:

(b) The attorney general, at the request of the Texas Department of Workforce Development [~~Central Education Agency~~], may bring a civil action to collect a civil penalty under this section.

SECTION 4.18. Section 32.64, Education Code, is amended to read as follows:

Sec. 32.64. SANCTIONS. (a) If the Texas Department of Workforce Development [~~Central Education Agency~~] has reasonable cause to believe that a proprietary school has violated this chapter or a rule adopted under this chapter, the department [~~agency~~] may:

- (1) order a peer review of the school; or
- (2) suspend the admission of students to the school.

(b) A peer review ordered under this section shall be conducted by a peer review team composed of knowledgeable persons selected by the Texas Department of Workforce Development [~~agency~~]. The department [~~agency~~] shall attempt to provide a balance on each team between members assigned to the team who are from this state and those who are from other states. The team shall provide the department [~~agency~~] with an objective assessment of the content of the school's curriculum and its application. The costs of providing a peer review team shall be paid by the school.

SECTION 4.19. Sections 32.71(a)-(e), Education Code, are amended to read as follows:

(a) Certificate and registration fees, except those charged pursuant to Subsection (d) of this section, shall be collected by the Administrator and deposited with the State Treasurer. Each fee shall be in an amount set by

the Administrator and approved by the commissioner of workforce development [~~State Board of Education~~] in an amount not to exceed 150 percent of each fee in the following schedule:

- (1) the initial fee for a school:
    - (A) for a certificate of approval is \$2,000; or
    - (B) for a small proprietary school certificate of approval is \$1,000;
  - (2) the first renewal fee and each subsequent renewal fee for a school is the greater of:
    - (A) an amount that is determined by applying a percentage, not to exceed 0.3 percent, to the gross tuition and fees, excluding refunds as provided by Section 32.39 of this code, of the school; or
    - (B) \$500;
  - (3) the initial registration fee for a representative is \$60;
  - (4) the annual renewal fee for a representative is \$30;
  - (5) the fee for a change of a name of a school or owner is \$100;
  - (6) the fee for a change of an address of a school is \$180;
  - (7) the fee for a change in the name or address of a representative or a change in the name or address of a school that causes the reissuance of a representative permit is \$10;
  - (8) the application fee for an additional course is \$150, except for seminar and workshop courses, for which the fee is \$25;
  - (9) the application fee for a director, administrative staff member, or instructor is \$15;
  - (10) the application fee for the authority to grant degrees is \$2,000;
  - (11) the application fee for an additional degree course is \$250; and
  - (12) the fee for an inspection required by rule of the commissioner of workforce development [~~State Board of Education~~] of classroom facilities that are separate from the main campus is \$250.
- (b) The commissioner of workforce development [~~education~~] shall periodically review and recommend adjustments in the level of fees to the [~~State Board of Education and the~~] legislature.
- (c) For purposes of this section, the gross amount of annual student fees and tuition for a proprietary school is the amount determined by the commissioner of workforce development [~~State Board of Education~~] based on any report submitted by the school to the Texas Department of Workforce Development [~~Central Education Agency~~] or other information obtained by the department [~~agency~~].
- (d) In connection with the regulation of any school or course through a memorandum of understanding pursuant to Section 32.12(c) of this code, the Administrator shall set an application and annual renewal fee, not to exceed \$2,000. The fee shall be approved by the commissioner of workforce development [~~State Board of Education~~] to be an amount reasonably calculated to cover the administrative costs associated with assuming the additional regulation.

(e) The fee for an investigation at a school to resolve a complaint filed against the school is \$400. The fee may be charged only if:

(1) the complaint could not have been resolved by telephone or written correspondence only;

(2) a representative of the Texas Department of Workforce Development [~~Central Education Agency~~] visits the school as a part of the complaint resolution process; and

(3) the school is found to be at fault.

SECTION 4.20. Section 32.81(a), Education Code, is amended to read as follows:

(a) The cost of administration of this Chapter shall be included in the State budget allowance for the Texas Department of Workforce Development [~~State Board of Education~~].

SECTION 4.21. Sections 32.91(a), (c), and (d), Education Code, are amended to read as follows:

(a) Except as provided by Subsection (e) of this section, at the time that each school pays its annual renewal fee, in the years provided by Subsection (c) of this section, the Texas Department of Workforce Development [~~State Board of Education~~] shall also collect a fee from the school for deposit to the credit of a special fund in the state treasury to be called the proprietary school tuition protection fund.

(c) [~~Beginning on January 1, 1990, the board shall collect the fee for two years.~~] If on January 1, 1993, or any subsequent year the amount in the fund is less than \$200,000, the Texas Department of Workforce Development [~~board~~] shall collect a fee during that year by applying a percentage to each school's annual renewal fee at a rate that will bring the balance of the fund to \$250,000.

(d) The state treasurer shall invest the fund in the same manner as other state funds. Sufficient funds from the tuition protection fund shall be appropriated to the Texas Department of Workforce Development [~~Central Education Agency administration~~] for the purpose outlined in this section.

SECTION 4.22. Section 32.92(a), Education Code, is amended to read as follows:

(a) If a proprietary school closes, the Texas Department of Workforce Development [~~Central Education Agency~~] shall attempt to arrange for students of the closed school to attend another proprietary school.

SECTION 4.23. Section 33.01(7), Education Code, is amended to read as follows:

(7) "Department" means the Texas Department of Workforce Development [~~"CEA" means the Central Education Agency~~].

SECTION 4.24. Section 33.02(a), Education Code, is amended to read as follows:

(a) Pursuant to the provisions of this chapter, the commissioner of workforce development [~~education~~] may allocate state funds for the support of apprenticeship training programs that meet the criteria set forth in this chapter.

SECTION 4.25. Section 33.04, Education Code, is amended to read as follows:

Sec. 33.04. NOTICE OF AVAILABLE FUNDS. In order to ensure ~~[insure]~~ that all citizens of this state [Texas] have an equal opportunity to benefit from apprenticeship training programs, the department ~~[State Board of Vocational Education]~~ shall provide for statewide publication in a manner recommended by the advisory committee and intended to give actual notice to all potential program sponsors of the amount of funds that will be available to support apprenticeship training programs during the current and following fiscal years, the qualifications required of program sponsors and apprenticeship committees, and the procedures to be followed in applying for state funds. The notice may also include other information recommended by the advisory committee and approved by the State Board of Vocational Education. Notwithstanding the foregoing, the department ~~[State Board of Vocational Education]~~ shall publish any information concerning available funds given to a particular program sponsor in a manner recommended by the advisory committee and intended to give actual notice to all potential program sponsors statewide.

SECTION 4.26. Sections 33.07(a) and (d), Education Code, are amended to read as follows:

(a) The department ~~[CEA]~~ shall maintain a clear audit trail of all funds appropriated for the apprenticeship system of adult vocational education. For each course that is funded, the audit trail in the department ~~[CEA]~~ shall include the following records:

- (1) the name of the sponsoring public school district or state postsecondary institution;
- (2) the name of the instructor;
- (3) the number of students enrolled;
- (4) the place and schedule of class meetings; and
- (5) certification by the BAT for preparatory and related instruction courses that the students enrolled were registered apprentices.

(d) All state funds appropriated to the department under ~~[Central Education Agency pursuant to]~~ this chapter are subject to audit by the state auditor in accordance with Chapter 321, Government Code. Funds received under ~~[pursuant to]~~ this chapter by a school district or postsecondary institution are subject to audit as otherwise provided by law.

SECTION 4.27. Section 33.08, Education Code, is amended to read as follows:

Sec. 33.08. APPROPRIATION AND DISTRIBUTION OF FUNDS.

(a) On recommendation of the advisory committee the State Board of Vocational Education, in conjunction with the department, shall adopt formulas and administrative procedures to be used in requesting appropriations of state funds as a budgetary line item for the Apprenticeship System of Adult Vocational Education.

(b) The department ~~[CEA]~~ shall prepare an update to the Apprenticeship Related Instruction Cost Study adopted by the State Board of Education on February 10, 1973, prior to each biennial session of the legislature.

(c) On recommendation of the advisory committee the State Board of Vocational Education, in conjunction with the department, shall adopt forms, formulas, and administrative procedures for the distribution of available funds to apprenticeship training programs. Distribution formulas must be uniform in application to all local program sponsors.

(d) On recommendation of the advisory committee the State Board of Vocational Education, in conjunction with the department, shall reserve until December 1 of each year a percentage of the funds appropriated under the line item described in this section to be used solely for apprenticeship-related instruction programs. This percentage shall be established by the formulas required by this section. Reserved funds that are not obligated on December 1 may be used for preparatory and supplementary instruction programs as well as related instruction programs.

(e) No funds shall be distributed to a public school district or state postsecondary institution until the district or institution has filed all reports required by this chapter, ~~and by~~ the State Board of Vocational Education, and the department.

SECTION 4.28. Section 33.09, Education Code, is amended to read as follows:

Sec. 33.09. RULES. The State Board of Vocational Education, in conjunction with the commissioner of workforce development, shall promulgate rules necessary to implement the provisions of this chapter.

SECTION 4.29. Section 33.10(a), Education Code, is amended to read as follows:

(a) Recommendations of the advisory committee submitted to the State Board of Vocational Education or the department must be acted on, and either accepted or rejected.

SECTION 4.30. Section 481.026, Government Code, is amended to read as follows:

Sec. 481.026. ~~[DUTIES OF]~~ LITERACY ~~[COUNCIL, INTERAGENCY WORK GROUP]~~. (a) In this section, "department" means the Texas Department of Workforce Development.

(b) The Texas Department of Workforce Development ~~[Literacy Council]~~ shall:

(1) advise the governor, the State Job Training Coordinating Council, the State Board of Education, the Texas Higher Education Coordinating Board, and any group interested in literacy on policy, planning, research, and program development;

(2) coordinate the development and maintenance of a literacy services delivery system;

(3) oversee the attainment of the state's literacy goals;

(4) build a partnership with the private sector in order to inform the objectives-setting process and to gain acceptance of the services of a functional literacy program;

(5) provide state leadership to encourage and support local and statewide literacy efforts;

(6) ~~[advise the State Board of Education on needs, priorities, and standards of adult literacy education programs conducted in accordance with Section 11.18, Education Code;~~

[~~(7)~~] advocate the importance of literacy to ensure that all in need of assistance understand the benefits of increased functional literacy and to ensure that the necessary resources are available;

~~(7)~~ [(8)] make literacy instruction available to adults and out-of-school youth by ensuring that a comprehensive literacy instruction capacity is present in every Texas community;

~~(8)~~ [(9)] coordinate and improve local literacy instruction to ensure the most efficient and effective use of resources to meet adult education goals;

~~(9)~~ [(10)] identify state and local literacy programs and enter them in a directory for centralized referral and communication;

~~(10)~~ [(11)] continue oversight of literacy needs analysis;

~~(11)~~ [(12)] continue to develop an awareness campaign;

~~(12)~~ [(13)] develop a timetable and objectives for reaching the proposed goals and subgoals; and

~~(13)~~ [(14)] make recommendations to the governor, lieutenant governor, and speaker of the house of representatives or other state officials or organizations that it considers appropriate regarding the expenditure of funds and the administration of programs.

~~[(b) An interagency work group is created to advise the council. The advisory work group is composed of representatives from the Central Education Agency, Texas State Library and Archives Commission, Texas Higher Education Coordinating Board, Texas Employment Commission, Texas Department of Corrections, Texas Department of Human Services, Texas Rehabilitation Commission, Advisory Council for Technical Vocational Education, and State Job Training Coordinating Council.~~

~~[(c) The council shall, with advice from the advisory work group, develop, adopt, and present to the 72nd Legislature a five-year strategic plan for comprehensive Texas literacy efforts. The plan must include:~~

~~[(1) identification of all money from private, local, and federal sources available for investment in state and community literacy programs;~~

~~[(2) proposals for acquiring local, state, and federal money identified in A Guide to Adult Literacy Funds and Resources to provide maximum support for state and community programs;~~

~~[(3) proposals for coordination of state government resources, planning, and personnel among the agencies advising the council, to ensure, within budget constraints and consistent with existing missions, general access to state support services for community programs;~~

~~[(4) identification of program shortages and gaps in service delivery, and proposals to establish a comprehensive service delivery system for all regions of the state and all target populations;~~

~~[(5) an appropriate balance in recommended funding and support services for both adult literacy training and early student intervention, to ensure development of a continuum of literacy training services targeted at family needs;~~

~~[(6) a discussion of evaluation tools used to measure student and program performance, in order to assure policymakers of concrete achievements and accountability for public funds; and~~

~~[(7) other items that should be included in the judgment of the council.]~~

(c) ~~[(d)]~~ The department may award literacy grants out of state, local, federal, and private money available to the department for that purpose. Grants shall be awarded under guidelines set by the commissioner of workforce development ~~[council]~~. The guidelines shall include a competitive request for proposal process ~~that includes~~ ~~designed by the council with the assistance of its advisory work group. The process shall include~~ criteria for evaluating the proposals.

(d) ~~[(e)]~~ The department ~~[council]~~ may establish a Texas literacy trust fund for the purpose of collecting private funds for distribution to community literacy programs. The fund must meet all applicable requirements under state and federal law necessary for qualification as a nonprofit trust. The fund, if established, shall be a separate fund kept and held in escrow and in trust by the state treasurer for and on behalf of the department ~~[council]~~ as funds held outside the treasury under Section 404.073. Unless prohibited by other law, the state treasurer may invest and reinvest the money, pending its use, in the fund in investments authorized by law for state funds that the state treasurer considers appropriate. The department shall distribute money from the fund under guidelines set by the commissioner of workforce development ~~[council]~~.

SECTION 4.31. Section 481.151, Government Code, is amended to read as follows:

Sec. 481.151. DEFINITIONS. In this subchapter:

(1) "Business development" includes relocation, expansion, turnover, diversification, or technological change.

(2) "Commissioner" means the commissioner of workforce development.

(3) "Demand occupation" means an occupation in which, as a result of business development, there are or will be positive growth-to-replacement ratios within the next 12 to 24 months, according to the best available sources of state and local labor market information.

(4) "Department" means the Texas Department of Workforce Development.

(5) ~~[(3)]~~ "Employee" means an individual who performs services for another under a contract of hire, whether express or implied, or oral or written.

(6) ~~[(4)]~~ "Employer" means a person that employs one or more employees.

(7) ~~[(5)]~~ "~~Executive director~~" means the ~~executive director of the department~~.

~~[(6)]~~ "Existing employer" means an employer that:

(A) has been liable to pay contributions under Subtitle A, Title 4, Labor Code, [the Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes)] for more than one year;

(B) has employees; and

(C) is in compliance with the reporting and payment requirements of that Act, as determined by the Texas Employment Commission.

(8) [(7)] "Family wage job" means a job that offers:

- (A) wages equal to or greater than the state average weekly wage;
- (B) benefits, such as vacation leave, sick leave, and insurance coverage;
- (C) reasonable opportunities for continued skill development and career path advancement; and
- (D) a substantial likelihood of long-term job security.

(9) [(8)] "In-kind contribution" means a noncash contribution of goods and services provided by an employer as all or part of the employer's matching share of a grant or project.

(10) [(9)] "Job" means employment on a basis customarily considered full-time for the applicable occupation and industry.

(11) [(10)] "Minority employer" means a business entity at least 51 percent of which is owned by minority group members or, in the case of a corporation, at least 51 percent of the shares of which are owned by minority group members and that:

- (A) is managed and, in daily operations, is controlled by minority group members; and
- (B) is a domestic business entity with a home or branch office located in this state and is not a branch or subsidiary of a foreign corporation or other foreign business entity.

(12) [(11)] "Minority group members" include:

- (A) African-Americans;
- (B) American Indians;
- (C) Asian-Americans; and
- (D) Mexican-Americans and other Americans of Hispanic origin.

(13) [(12)] "Program" means the smart jobs fund program created under this subchapter.

(14) [(13)] "Project" means a specific employment training project developed and implemented under this subchapter.

(15) [(14)] "Provider" means a person that provides employment-related training. The term includes employers, employer associations, labor organizations, community-based organizations, training consultants, public and private schools, technical institutes, junior or community colleges, senior colleges, universities, and proprietary schools, as defined by Section 32.11, Education Code.

(16) [(15)] "State average weekly wage" means the annual average of the average weekly wage of manufacturing production workers in this state as of September 1 of each year, as determined by the Texas Employment Commission under Section 207.002, Labor Code [3(b), ~~Texas Unemployment Compensation Act (Article 5221b-1, Vernon's Texas Civil Statutes)~~], adjusted for regional variances.

(17) [(16)] "Targeted industry" means an industry that promotes high-skill, high-wage jobs using Texas-available material and human resources, as determined by the department.



(18) [(17)] "Trainee" means a participant in a project funded under this subchapter.

(19) [(18)] "Wages" means all forms of compensation or remuneration, excluding benefits, payable for a specific period to an employee for personal services rendered by that employee.

SECTION 4.32. Section 481.152(d), Government Code, is amended to read as follows:

(d) The commissioner [~~executive director~~] may employ personnel as necessary to administer the program.

SECTION 4.33. Section 481.153, Government Code, is amended to read as follows:

Sec. 481.153. RULES. The commissioner [~~policy board~~] shall adopt rules as necessary to implement the program.

SECTION 4.34. Section 481.154(d), Government Code, is amended to read as follows:

(d) If, during any three consecutive months, the balance in the smart jobs fund exceeds 0.15 percent of the total taxable wages for the four calendar quarters ending the preceding June 30, as computed under Section 204.062, Labor Code [~~7(c)(8), Texas Unemployment Compensation Act (Article 5221b-5, Vernon's Texas Civil Statutes)~~], the commissioner [~~executive director~~] shall immediately transfer the excess to the Unemployment Compensation Fund created under Section 203.021, Labor Code [~~9(a), Texas Unemployment Compensation Act (Article 5221b-7, Vernon's Texas Civil Statutes)~~].

SECTION 4.35. Sections 481.155(a), (d), (e), and (g), Government Code, are amended to read as follows:

(a) The commissioner [~~executive director~~] may award grants for projects that meet the requirements of this chapter. The commissioner [~~executive director~~] shall attempt to ensure that at least 20 percent of the total dollar amount of grants awarded under the program are awarded to minority employers.

(d) An employer may apply for a grant under this chapter if the employer is required to reduce or eliminate the employer's work force because of reductions in overall employment within an industry or a substantial change in the skills required to continue the employer's business because of technological changes or other factors. In awarding a grant under this subsection, the commissioner [~~executive director~~] may modify the requirements of Subsection (c). Grants awarded under this subsection for which the commissioner [~~executive director~~] has modified the requirements of Subsection (c) may not, in any fiscal year, exceed 10 percent of the total dollar amount of grants awarded under the program in that year.

(e) Unless modified by the commissioner [~~executive director~~] under rules adopted by the commissioner [~~policy board~~], a grant may not be awarded for a project unless each employer participating in the project certifies that it will continue to spend on nonmanagerial training an amount from private sources equal to the average amount spent by that employer on such training for the most recent two-year period.

(g) During each state fiscal year the commissioner [~~executive director~~] shall attempt to ensure that at least 50 percent of the total dollar amount of grants awarded under this section is awarded to small businesses, as defined by Section 481.101.

SECTION 4.36. Sections 481.156(b) and (e), Government Code, are amended to read as follows:

(b) A grant application must be filed with the department in a form approved by the commissioner [~~executive director~~] and must include a complete business and training plan, including:

- (1) the number and kind of jobs available;
- (2) the skills and competencies required for the identified jobs;
- (3) the wages to be paid to trainees on successful completion of the project;
- (4) the goals, objectives, and outcome measures for the project;
- (5) the proposed curriculum for the project; and
- (6) the projected cost per person enrolled, trained, hired, and retained in employment.

(e) The commissioner [~~executive director~~] shall act on a completed application not later than the 30th day after the date on which the application is filed with the department.

SECTION 4.37. Section 481.157(b), Government Code, is amended to read as follows:

(b) The commissioner [~~policy board~~] may adopt rules modifying the requirements of Subsection (a) for employers with fewer than 50 employees and may also adopt rules modifying the requirements of Subsection (a) for projects that provide significant economic benefits to an entire region of the state.

SECTION 4.38. Section 481.159(a), Government Code, is amended to read as follows:

(a) The commissioner [~~executive director~~] may approve any project that meets the requirements of this subchapter. If the commissioner [~~executive director~~] approves a project and funds are available, the department shall enter into a contract with the grant applicant and with each employer participating in the project. The contract must specify those skills and competencies to be gained as a result of the project.

SECTION 4.39. Section 481.160(a), Government Code, is amended to read as follows:

(a) The commissioner [~~executive director~~] shall report to the governor and the legislature at the end of each fiscal year on the status of the program.

SECTION 4.40. Sections 481.1601(b) and (c), Government Code, are amended to read as follows:

(b) Every six months the commissioner [~~executive director~~] shall submit to the legislative review committee a report covering the previous six-month period and containing the information required for a report under Section 481.160. The legislative review committee shall review the report and submit to the commissioner [~~executive director~~] recommendations concerning the carrying out of the program.

(c) The commissioner [~~executive director~~] shall submit with the report required under Section 481.160:

(1) copies of the recommendations that the commissioner [~~executive director~~] has received from the legislative review committee during the preceding fiscal year; and

(2) a statement of the commissioner's [~~executive director's~~] actions taken on the recommendations.

SECTION 4.41. Sections 499.051(f)-(h), Government Code, are amended to read as follows:

(f) The Texas Department of Workforce Development [~~Employment Commission~~] shall provide inmates participating in the urban prerelease program with employment counseling and shall help the department obtain work for inmates. The pardons and paroles division shall provide inmates with counseling to help inmates make the transition from participation in the urban prerelease program to supervision under parole.

(g) Before beginning an urban prerelease program under this section, the institutional division, the pardons and paroles division, and the Texas Department of Workforce Development [~~Employment Commission~~] shall by rule adopt a memorandum of understanding that establishes the respective responsibilities of those agencies in participating in the urban prerelease program. The institutional division shall coordinate development of the memorandum of understanding.

(h) The institutional division, the pardons and paroles division, and the Texas Department of Workforce Development [~~Employment Commission~~] jointly shall conduct an annual review of the urban prerelease program.

SECTION 4.42. Sections 501.095(a), (b), and (d), Government Code, are amended to read as follows:

(a) The institutional division, the pardons and paroles division, and the Texas Department of Workforce Development [~~Employment Commission~~] shall by rule adopt a memorandum of understanding that establishes their respective responsibilities to establish a continuity of care program for inmates with a history of chronic unemployment.

(b) An agency of the state not listed in this section [~~subsection~~] that determines that it may provide services to inmates with a history of chronic unemployment may participate in the development of the memorandum, if the parties listed in this section [~~subsection~~] approve the agency's participation.

(d) The Texas Department of Workforce Development [~~Employment Commission~~] shall coordinate the development of the memorandum of understanding.

SECTION 4.43. Section 31.009, Human Resources Code, is amended to read as follows:

Sec. 31.009. REQUIRED REGISTRATION WITH TEXAS DEPARTMENT OF WORKFORCE DEVELOPMENT [~~EMPLOYMENT COMMISSION~~]. (a) A person who is required to register with the Texas Department of Workforce Development [~~Employment Commission~~] under the Employment Incentive Act is not eligible to receive financial assistance under this chapter until the person is registered.

(b) Before making a payment, the department shall determine whether the person to whom the payment is to be made is required to register with the Texas Department of Workforce Development [~~Employment Commission~~] under the Employment Incentive Act, and if the person is required to register, whether the person is registered. If the department finds that a person who is required to register is not registered, the department may not make the payment.

(c) On receipt of notice from the Texas Department of Workforce Development [~~Employment Commission~~] that a person has failed to comply with the Employment Incentive Act, the department shall immediately terminate the person's financial assistance.

(d) The department shall maintain a current record of all persons found to be ineligible to receive financial assistance for failure to comply with the Employment Incentive Act. The department shall distribute the record to each division within the department in which the record is or may be relevant in determining eligibility for any welfare benefits.

(e) The department shall arrange placement of the dependent children of an ineligible person with another person or with an institution if the department determines that alternative care is in the best interest of the children.

SECTION 4.44. Section 31.012, Human Resources Code, is amended to read as follows:

Sec. 31.012. JOB OPPORTUNITIES AND BASIC SKILLS PROGRAM. (a) In the event the federal job opportunities and basic skills program for recipients of Aid to Families with Dependent Children is discontinued or is inadequate to meet the recipients' needs, the state shall operate a program to provide employment, education, and training opportunities, subject to available funds.

(b) A state program operated under this section shall be administered by the Texas Department of Workforce Development.

SECTION 4.45. Section 31.0125, Human Resources Code, is amended to read as follows:

Sec. 31.0125. COMMUNITY WORK EXPERIENCE PROGRAM.

(a) Subject to the availability of appropriations for client support services, the Texas Department of Workforce Development [~~department by rule~~] shall develop and implement a community work experience program in accordance with federal law as a part of the job opportunities and basic skills (JOBS) training program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682).

(b) In adopting rules under this section, the commissioner of workforce development [~~department~~] shall:

(1) establish the criteria for determining which recipients of financial assistance under this chapter who are eligible to participate in the JOBS training program will be required to participate in the community work experience program;

(2) ensure that participation in the community work experience program will not result in the displacement of an employee from an existing position or the elimination of a vacant position;

(3) ensure that the community work experience program will not impair an existing service contract or collective bargaining agreement;

(4) ensure that an entity or agency that enters into an agreement with the Texas Department of Workforce Development [department] under this section provides to a participant, without paying the participant a salary, job training and work experience in certain areas within the entity or agency;

(5) require that each entity or agency that enters into a cooperative agreement with the Texas Department of Workforce Development [department] under this section identify positions within the entity or agency that will enable a participant to gain the skills and experience necessary to be able to compete in the labor market for comparable positions; and

(6) amend the service delivery system of the JOBS training program to require a participant in the JOBS training program who is unemployed after completing the JOBS readiness activities outlined in the participant's employability plan, including job search, to participate in the community work experience program.

(c) To implement the community work experience program, the Texas Department of Workforce Development [department] shall enter into written nonfinancial cooperative agreements with entities that receive funds under a federal Head Start program and with state agencies, including institutions of higher education or other entities of state government. To be eligible to enter into a contract under this section, the entity or agency must employ at least 250 persons. The Texas Department of Workforce Development [department] and the entity or agency may waive this requirement by mutual agreement.

(d) The Texas Department of Workforce Development [department] and an entity or agency that enters into an agreement under this section must establish participation requirements for the entity or agency under the community work experience program. The requirements must be contained in the agreement.

SECTION 4.46. Sections 101.023(b) and (c), Human Resources Code, are amended to read as follows:

(b) The Texas Department of Workforce Development [department] may establish and administer a community program for persons 55 years of age or older who lack suitable employment and have family incomes under federal poverty guidelines.

(c) The Texas Department of Workforce Development [department] may contract with a public agency or a private, nonprofit organization with experience in managing similar programs to employ persons under this program in providing recreation, beautification, conservation, or restoration services, or public service employment positions for state, county, city, or regional governments or school districts. The Texas Department of Workforce Development [department] may not contract with an organization that is not a subscriber under the state workers' compensation law or that does not pay the federal minimum wage rate or the prevailing wage rate for the particular job, whichever is greater.

SECTION 4.47. Section 3, Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. DEFINITIONS. In this Act:

(1) ~~["Agency" means the Central Education Agency, acting directly or through its authorized officers and agents.~~

~~[(2) "Board" means the State Board of Education.~~

~~[(3) "Commissioner" means the commissioner of workforce development [education] or a person knowledgeable in the administration of regulating driver training schools and designated by the commissioner to administer this Act.~~

(2) "Department" means the Texas Department of Workforce Development.

(3) ~~[(4)]~~ "Driver education" means a nonvocational course of instruction that provides the knowledge and hands-on experience to prepare persons for written and practical driving tests that lead to authorization to operate a vehicle.

(4) ~~[(5)]~~ "Driver training school" or "school" means any enterprise that maintains a place of business or solicits business in the state, that is operated by an individual, association, partnership, or corporation, for the education and training of persons, at a primary location or extension, in driver education, driving safety, or any instructor development program, and that is not specifically exempted by this Act.

(5) ~~[(6)]~~ "Driving safety course" means a course of instruction intended to improve a driver's knowledge, perceptions, and attitudes about driving.

(6) ~~[(7)]~~ "Extension" means an entity that geographically extends the educational resources of a driver training school by offering a driving safety course in a location other than the main business location of the school. An extension may use multiple locations to teach a driving safety course if each location is approved by the parent school and the agency. A driver education course may not be conducted at an extension. An extension of an extension is not permitted.

(7) ~~[(8)]~~ "Operator" means a person approved by a driving safety course owner or consignee to conduct an agency-approved driving safety course.

(8) ~~[(9)]~~ "Owner" means:

(A) in the case of a school owned by an individual, the individual;

(B) in the case of a school owned by a partnership, all full, silent, or limited partners; or

(C) in the case of a school owned by a corporation, the corporation, its directors, officers, and each shareholder owning at least 10 percent of the total of the issued and outstanding shares.

(9) ~~[(10)]~~ "Person" means an individual, firm, partnership, association, corporation, or other private entity or combination of persons.

(10) ~~[(11)]~~ "School employee" means any person, other than an owner, who directly or indirectly receives compensation from the school for services rendered.

(11) [(12)] "Support" means the primary source and means by which a school derives revenue.

(12) [(13)] "Suspension of enrollment" means a ruling by the commissioner that restricts a school from accepting enrollments or reenrollments, advertising, soliciting, or directly or indirectly advising prospective students of its program or course offerings.

(13) [(14)] "Uniform certificate of completion" means a document that is printed, administered, and supplied by the agency to owners or primary consignees for issuance to students who successfully complete an agency-approved driving safety course and that meets the requirements of Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(14) [(15)] "Instructor" means an individual who has been licensed by the agency for the type of instruction being given.

SECTION 4.48. Section 4, Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. GENERAL POWERS AND DUTIES. (a) The department [agency] shall exercise jurisdiction and control of the system of schools, and the commissioner shall administer this Act and enforce minimum standards for schools under this Act.

(b) The commissioner [board] shall enter into a memorandum of understanding with the Texas Rehabilitation Commission and the Department of Public Safety for the interagency development of curricula and licensing criteria for hospital and rehabilitation facilities that teach driver education. The department [agency] shall administer comprehensive rules governing driver education courses adopted by mutual agreement between the department [board], the Texas Rehabilitation Commission, and the Department of Public Safety. The commissioner [board] shall file the rules with the secretary of state.

SECTION 4.49. Section 6, Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. DUTIES OF COMMISSIONER. [(a)] The commissioner shall carry out the policies of this Act, adopt [enforce] rules to implement this Act [adopted by the board], and certify those schools meeting the requirements for a driver training school license.

[(b) The commissioner may adopt and enforce temporary rules under this Act, but the temporary rules are valid only until the next meeting of the board.]

SECTION 4.50. Section 8, Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. COMPETITIVE BIDDING; ADVERTISING. (a) The commissioner [board] may not adopt rules to restrict competitive bidding or advertising by a driver training school except to prohibit false, misleading, or deceptive competitive bidding or advertising practices. Specifically, no rule may restrict:

(1) the use of an advertising medium;  
(2) the outside dimensions of a printed advertisement or outdoor display;

- (3) the duration of an advertisement; or  
(4) advertisement under a trade name.

(b) The commissioner [~~board~~] may adopt rules to restrict advertising by a branch location of a school so that the branch location adequately identifies its primary driver training school in any solicitation.

SECTION 4.51. Section 11, Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. LOCATIONS AUTHORIZED FOR INSTRUCTION. Driving safety courses complying with Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), may be taught at an extension or in a driver training school if the entity is approved by the department [~~agency~~]. Instructor preparation courses may be conducted at a course owner's facilities. All other driver training courses must be conducted in [~~agency-approved~~] schools approved by the department.

SECTION 4.52. Section 12(a), Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) To operate or do business in this state, a school must make written application to the commissioner for a driver training school license. The application must be verified, be in the form prescribed by the commissioner [~~board~~], and include all information required. A school that offers driving safety courses shall obtain approval from the department [~~agency~~] for any extension.

SECTION 4.53. Section 13, Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. REQUISITES FOR LICENSE. (a) The commissioner shall approve the application of a school when the school is found, on investigation at the premises of the school, to meet the following criteria:

(1) the courses, curriculum, and instruction are of such quality, content, and length as may reasonably and adequately achieve the stated objective for which the courses, curriculum, and instruction are offered;

(2) there are in the school, and in the provision for behind-the-wheel instruction, adequate space, equipment, instructional material, and instructors to provide training of good quality;

(3) educational and experience qualifications of directors, instructors, and administrators are adequate;

(4) a copy of the schedule of tuition, fees, refund policy, and other charges, regulations pertaining to absence, grading policy, and rules of operation and conduct, and the name, mailing address, and telephone number of the department [~~agency~~] for the purpose of directing complaints to the department [~~agency~~] is furnished to each student before enrollment;



(5) on completion of training, each student is given a certificate by the school indicating the course name and satisfactory completion;

(6) adequate records as prescribed by the commissioner are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress, and conduct are enforced;

(7) the school complies with all county, municipal, state, and federal regulations, including fire, building, and sanitation codes and assumed name registration;

(8) the school is financially sound and capable of fulfilling its commitments for training;

(9) the school's administrators, directors, owners, and instructors are of good reputation and character;

(10) the school has, maintains, and publishes as part of its student enrollment contract the proper policy for the refund of the unused portion of tuition, fees, and other charges if a student enrolled by the school fails to take the course or withdraws or is discontinued from the school at any time before completion;

(11) the school does not use erroneous or misleading advertising, either by actual statement, omission, or intimation, as determined by the department [board];

(12) the school does not use a name like or similar to the name of another existing school or tax-supported educational establishment in this state, unless specifically approved in writing by the commissioner;

(13) the school submits to the department [agency] for approval the applicable course hour lengths and curriculum content for each course offered by the school;

(14) the school does not owe a civil penalty under this Act; and

(15) additional criteria as may be required by the commissioner [board].

(b)[(1)] License, application, and registration fees shall be collected by the commissioner and deposited with the state treasurer. Fees shall be sufficient to cover administrative costs and may not be subject to refund. Each fee shall be set by the commissioner [~~and approved by the board~~] in an amount not to exceed 150 percent of the following:

(1) [(A)] the initial fee for a driver training school license is \$1,700 plus \$850 for each branch location;

(2) [(B)(i)] annual renewal fees as specified in this subsection may be waived by the department [agency] if revenue generated by the sale of uniform certificates of completion is sufficient to fund the cost of administering this Act and Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes); [~~and~~]

(3) [(1)] the annual renewal fee for a school license shall be determined by the commissioner [board] in an amount sufficient to fund the cost of administering this Act and Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes);

(4) [(C)] the fee for a change of address of a school is \$180;

(5) ~~(D)~~ the fee for a change of name of a school or owner is \$100;

(6) ~~(E)~~ the application fee for each additional course is \$25;

(7) ~~(F)~~ the application fee for each director is \$30, and for each assistant director, or administrative staff member is \$15;

(8) ~~(G)~~ the fee for each extension is \$35;

(9) ~~(H)~~ each application for an original driver training instructor's license shall be accompanied by a processing fee of \$50 and an annual license fee of \$25; and

(10) ~~(I)~~ the fee for a duplicate license, which may be issued if the original is lost or destroyed and an affidavit of that fact is filed with the department ~~[agency]~~, shall be set by the commissioner ~~[board]~~ in an amount sufficient to cover the costs of issuing the duplicate license.

(c) ~~(2)~~ A driver education instructor who teaches driver education courses in a county having a population of 50,000 or less, according to the most recent federal census, and who has no more than 200 students annually, shall be regulated by the department ~~[agency]~~ as a school. An instructor described by this subdivision shall submit a school application or renewal form plus all required documentation and information to the department ~~[agency]~~. The commissioner may waive initial school fees, annual school renewal fees, or director's or administrative staff member's fees. An instructor described by this subsection ~~[subdivision]~~ is not exempt from licensing requirements or fees.

(d) ~~(3)~~ The commissioner shall periodically review and adjust ~~[recommend adjustments in]~~ the level of fees ~~[to the board and legislature]~~.

(e) ~~(4)~~ The fee for an investigation at a school to resolve a complaint filed against the school shall be set by the commissioner ~~[and approved by the board]~~. The complaint investigation fee may be charged only if:

(1) ~~(A)~~ the complaint could not have been resolved solely by telephone or written correspondence;

(2) ~~(B)~~ a representative of the department ~~[agency]~~ visited the school as a part of the complaint resolution process; and

(3) ~~(C)~~ the school is found to be at fault.

(f) ~~(5)~~ The department ~~[agency]~~ shall print and supply serially numbered uniform certificates of course completion to owners or primary consignees of courses approved under this Act. The department ~~[agency]~~ may charge a fee of \$1 for each certificate. An owner or consignee may not charge an operator a fee in excess of the fee paid to the department ~~[agency]~~ for a certificate.

(g) ~~(6)~~ The commissioner ~~[, with approval of the board,]~~ may increase any fee authorized under this section ~~[subsection]~~ at a rate that does not exceed the increase in the Consumer Price Index for All Urban Consumers published by the Department of Labor. Fees under this section ~~[subsection]~~ do not have to be increased annually.

(h) ~~(7)~~ Fees collected under this section ~~[subsection]~~ shall be deposited in the state treasury in a special account in the General Revenue Fund. Money in the account may be appropriated only for the administration of this Act and Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(i) [(c)] The cost of administration of this Act shall be included in the state budget allowance for the department [board].

(j) [(c)(1)] The commissioner, on review of an application for a driver training school license that is submitted in accordance with this Act and that meets the requirements of this Act, shall issue a driver training school license to the applicant. A driver training school license shall be in the [a] form prescribed [recommended] by the commissioner [and approved by the board] and shall show in a clear and conspicuous manner at least the following:

- (1) [(A)] the date of issuance, effective date, and term of approval;
- (2) [(B)] the name and address of the school;
- (3) [(C)] the authority for approval and conditions of approval;
- (4) [(D)] the signature of the commissioner; and
- (5) [(E)] any other fair and reasonable representations that are

consistent with this Act and considered necessary by the commissioner.

(k) [(2)] The term for which a driver training school license is issued may not exceed one year.

(l) [(3)(A)] A driver training school license issued to an owner of the applicant school is nontransferable and is the property of the state. In the event of a change in ownership of the school, a new owner shall, at least 30 days before the date of the change in ownership, apply for a new driver training school license. Instead of the fees required by Subsection (b) of this section, the fee for a new license required under this subsection [subdivision] is \$500, plus \$200 for each branch location, if the purchasing entity is substantially similar to the transferring entity and there is no significant change in the management or control of the school.

(m) [(B)] The commissioner is not required to reinspect a school or a branch location after a change of its ownership.

(n) [(4)] At least 30 days before the expiration of a driver training school license, the school shall forward to the commissioner an application for renewal. The commissioner may reexamine the school premises and shall renew or cancel the school's driver training school license. If a school fails to file a complete application for renewal at least 30 days before the expiration date of the driver training school license, the school shall pay as a condition of renewal and in addition to any annual renewal fee a late renewal fee in an amount established by [board] rule of at least \$100, subject to Subsection (b) of this section.

(o) [(5)] The commissioner shall visit a school and reexamine the school for compliance with the criteria adopted under this Act.

(p) [(c)(1)] If the commissioner determines the applicant for a driver training school license to be unacceptable, the commissioner shall state the reasons for denial, in writing, to the applicant.

(q) [(2)] Any applicant whose driver training school license is denied has the right of appeal under Section 18 of this Act.

(r) [(f)(1)] The commissioner may revoke a driver training school license or may place reasonable conditions on the continued approval represented by the license. On revocation or imposition of conditions on a driver training school license, the commissioner shall notify the licensee,

in writing, of the impending action and state the grounds for the proposed action. The commissioner may reexamine a school two or more times during any year in which a notice relating to the school has been issued or conditions have been imposed on the school under this section ~~[subsection]~~.

~~(s)~~ ~~(2)~~ A driver training school license may be revoked or be made conditional if the commissioner has reasonable cause to believe that the school is guilty of a violation of this Act or any rule adopted under this Act.

~~(t)~~ ~~(g)~~ Before a driver training school license may be issued under this Act, a bond shall be provided by the school for the period for which the license is to be issued, and the obligation of the bond shall be that neither a provision of this Act nor any rule adopted under this Act shall be violated by the school or any of its officers, agents, or employees. A driver training school that teaches driver education shall submit a bond in the amount of \$10,000 for its primary driver training school and \$5,000 for each branch location of the school. All other schools shall submit a bond in the amount of \$5,000. A bond must be a corporate surety bond issued by a company authorized to do business in the state, be payable to the state, and be used only for payment of a refund due to a student or potential student. The bond shall be filed with the commissioner and shall be in such form as shall be approved by the commissioner. Posting of these bond amounts shall satisfy the requirements for financial stability for schools under this Act.

~~(u)~~ ~~(h)~~ ~~(1)~~ As a condition for the granting of a driver training school license, a school must maintain a cancellation and settlement policy that provides a full refund of all money paid by a student if:

~~(1)~~ ~~(A)~~ the student cancels the enrollment agreement or contract before midnight of the third day, excluding Saturdays, Sundays, and legal holidays, after the date the enrollment contract is signed by the prospective student, unless the student has completed the course and accepted a certificate of completion during that period; or

~~(2)~~ ~~(B)~~ the enrollment of the student was procured as a result of any misrepresentation in advertising, promotional materials of the school, or representation made by an owner or employee of the school.

~~(v)~~ ~~(2)~~ Unless only driving safety courses are proposed to be provided, as a condition for granting a driver training school license, a school shall maintain a policy for the refund of the unused portion of tuition, fees, and other charges if a student, after expiration of the cancellation period described by Subsection (u) ~~[Subdivision (1)]~~ of this section ~~[subsection]~~, fails to enter the course, withdraws, or is discontinued from the course at any time before completion, and the policy must provide that:

~~(1)~~ ~~(A)~~ refunds are based on the period of enrollment computed on the basis of course time expressed in clock hours;

~~(2)~~ ~~(B)~~ the effective date of the termination for refund purposes is the earliest of the following:

(A) [(+)] the last day of attendance, if the student's enrollment is terminated by the school;

(B) [(+)] the date of receipt of written notice from the student; or

(C) [(+)] the 10th school day following the last day of attendance;

(3) [(E)] if tuition is collected in advance of entrance and if, after expiration of the cancellation period described by Subsection (u) [~~Subdivision (1)~~] of this section [~~subsection~~], a student does not enter the school, terminates enrollment, or withdraws, the school may retain up to \$50 as administrative expenses and, from the remainder, shall refund that portion of the classroom tuition and fees and behind-the-wheel tuition and fees for services not previously received by the student;

(4) [(D)] refunds of items of extra expense to the student, including instructional supplies, books, laboratory fees, service charges, rentals, deposits, and all other such ancillary miscellaneous charges, will be made within 30 days after the effective date of enrollment termination, if these items are separately stated and shown in the data furnished the student before enrollment; and

(5) [(E)] refunds will be completed within 30 days after the effective date of enrollment termination.

(w) [(3)] If the course of instruction is discontinued by the school, preventing a student from completing the course, all tuition and fees paid are then due and refundable.

(x) [(4)] If a refund is not made within the period required by this section [~~subsection~~], the school shall pay interest on the refund for the interval beginning with the first day following the expiration of the refund period and ending with the day immediately preceding the date the refund is made. The commissioner annually shall establish the rate of interest at a rate sufficient to provide a deterrent to the retention of student funds. The commissioner [~~agency~~] may except a school from the payment of the interest if the school makes a good-faith effort to refund tuition but is unable to locate the student to whom the refund is owed. The school shall provide on request of the department [~~agency~~] documentation of the effort to locate a student.

SECTION 4.54. Section 15(a), Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person may not teach or give driver training, either as an individual or in a driver training school, or any phase of driver training or education, unless a license as an instructor has been secured from the department [~~agency~~], except that:

(1) a driver education instructor teaching in a public secondary school supported by taxation from either a local or state source is exempt from this section;

(2) a driver education instructor in a college or university regulated by the Texas Higher Education Coordinating Board is exempt; and

(3) an instructor in a driving safety program that does not provide a uniform certificate of completion to its graduates is exempt from this section.

SECTION 4.55. Section 16, Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16. DENIAL, SUSPENSION, REVOCATION GROUNDS. The department [agency] may deny, suspend, or revoke the license of any instructor on any one or more of the following grounds:

(1) when the department [agency] is satisfied that the applicant or licensee fails to meet the requirements to receive or hold a license under this Act;

(2) when the applicant or licensee permits fraud or engages in fraudulent practices with reference to the application to the agency, induces or countenances fraud or fraudulent practices on the part of any applicant for a driver's license or permit, or permits or engages in any other fraudulent practice in any action between the applicant or licensee and the public; or

(3) when the applicant or licensee fails to comply with the rules of the commissioner [agency] regarding the instruction of drivers in this state or fails to comply with any section of this Act.

SECTION 4.56. Section 17, Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 17. HEARING. (a) When there is cause to deny an application or to suspend or revoke any license, the department [agency], not less than 15 days before the date denial, suspension, or revocation action is taken, shall notify the person in writing, in person, or by certified mail at the last address supplied to the department [agency] by the person, of the impending denial, suspension, or revocation, the reasons therefor, and of the person's right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the denial, suspension, or revocation action proposed to be taken by the department [agency]. If, within 20 days after the date of personal service of notice or the date notice was deposited in the United States mail, the person has not made a written request to the department [agency] for an administrative hearing, the department [agency] is authorized to deny, suspend, or revoke the license without a hearing. On receipt by the department [agency] of a written request of the person within the 20-day period, an opportunity for an administrative hearing shall be afforded. In no case shall the hearing be held less than 10 days after the date written notification thereof, including a copy of the charges, shall have been given the person by personal service or by certified mail sent to the last address supplied to the department [agency] by the applicant or licensee.

(b) The department [agency] shall conduct the administrative hearing and is authorized to administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, and documents. On the basis of the evidence submitted at the hearing, the

department [agency] shall take whatever action it deems necessary in denying the application or suspending or revoking the license.

SECTION 4.57. Section 18(d), Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes), is amended to read as follows:

(d) On filing of the lawsuit, citation shall be served on the commissioner, who shall cause to be made a complete record of all proceedings had before the commissioner and certify a copy of the proceedings to the court. Trial before the court shall be on the basis of the record made before the commissioner, and the court shall make its decision based on the record. The commissioner's decision shall be affirmed by the court if the court finds substantial evidence in the record to justify the decision, unless the court finds the denial of the license to be:

- (1) arbitrary and capricious;
- (2) in violation of the constitution or laws of the United States or this state; or
- (3) in violation of rules adopted by the commissioner [board] under this Act.

SECTION 4.58. Section 22, Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 22. SURRENDER OF LICENSE. On the revocation or suspension of any license, the licensee shall within five days after the date of revocation or suspension surrender the license or licenses to the department [agency]; failure of a licensee to do so shall be a violation of this Act and upon conviction shall be subject to the penalties hereinafter set forth. The department [agency] may restore a suspended license to the former licensee upon full compliance with the provisions of this Act. No suspension invoked hereunder shall be for a period less than 30 days nor longer than one year.

SECTION 4.59. Section 25, Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 25. SANCTIONS. (a) If the department [agency] believes that a school has violated this Act or a rule adopted under this Act, the department [agency] may, without notice:

- (1) order a peer review of the school; or
- (2) suspend the admission of students to the school.

(b) A peer review ordered under this section shall be conducted by a peer review team composed of knowledgeable persons selected by the department [agency]. The team shall provide the department [agency] with an objective assessment of the content of the school's curriculum and its application. The costs of providing a peer review team shall be paid by the school.

SECTION 4.60. The following laws are repealed:

- (1) Section 11(b)(4), Education Code, as amended by Chapter 812, Acts of the 71st Legislature, Regular Session, 1989; and
- (2) Section 32.22, Education Code.

## ARTICLE 5. TRANSITION; EMERGENCY

SECTION 5.01. Each program listed in Section 302.041, Labor Code, as added by Section 1.02 of this Act, is transferred to the jurisdiction of the Texas Department of Workforce Development on the effective date of this Act. A reference in a law or administrative rule to the agency that administered a program listed in that section before the effective date of this Act means the Texas Department of Workforce Development.

SECTION 5.02. (a) A transition oversight committee is created to supervise the transition of the programs listed in Section 302.041, Labor Code, as added by Section 1.02 of this Act, to the jurisdiction of the Texas Department of Workforce Development. The committee is composed of:

- (1) the administrator of the Texas Employment Commission;
- (2) the commissioner of education;
- (3) the commissioner of human services;
- (4) the executive director of the Texas Department on Aging;
- (5) the executive director of the Texas Department of Commerce;
- (6) a representative of the governor;
- (7) a representative of the lieutenant governor; and
- (8) a representative of the speaker of the house of representatives.

(b) The representative of the governor shall serve as presiding officer of the committee.

(c) Each state agency affected by the transfer of program jurisdiction shall cooperate with the committee and the Texas Department of Workforce Development in formulating and implementing a transition plan.

(d) The committee shall:

- (1) appoint a full-time staff person with clerical assistance as necessary to assist in implementing the duties of the committee; and
- (2) require each affected state agency to develop a transition plan and interim operating budget as necessary to ensure an orderly transition.

(e) The committee may:

- (1) adopt interim rules and procedures as necessary to implement this section, consistent with this Act and the laws of this state; and
- (2) transfer staff from the affected state agencies to the committee to assist the committee in the implementation of its duties.

(f) The committee shall hold its initial meeting not later than the 30th day after the effective date of this Act.

(g) This section expires and the committee is abolished January 1, 1996.

SECTION 5.03. (a) A person serving as the coordinator, director, manager, or other analogous officer for a program that is transferred to the jurisdiction of the Texas Department of Workforce Development under Section 302.041, Labor Code, as added by Section 1.02 of this Act, on the day before the effective date of this Act may continue to serve in that capacity until January 1, 1996, but shall report to the commissioner of workforce development as of the effective date of this Act.

(b) The commissioner of workforce development shall appoint a person who meets the qualifications for service in a position affected by Subsection (a) of this section not later than January 1, 1996. A person serving under Subsection (a) of this section is eligible for appointment under this subsection.



SECTION 5.04. The Texas State Employment Service is transferred from the Texas Employment Commission to the Texas Department of Workforce Development on the effective date of this Act. All property, records, funds, and staff of the Texas State Employment Service shall be transferred to the Texas Department of Workforce Development not later than January 1, 1996.

SECTION 5.05. The initial term of the commissioner of workforce development expires February 1, 1997.

SECTION 5.06. (a) In addition to the new changes in law made by this Act relating to job training and school dropout prevention, this Act conforms Sections 305.021(a) and (b), Labor Code, as added by this Act, to changes made by Section 1, Chapter 183, Acts of the 73rd Legislature, Regular Session, 1993.

(b) Section 1, Chapter 183, Acts of the 73rd Legislature, Regular Session, 1993, is repealed.

SECTION 5.07. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Question—Shall Floor Amendment No. 15 to **C.S.H.B. 1863** be adopted?

#### AT EASE

The President at 1:56 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

#### IN LEGISLATIVE SESSION

The President at 2:34 p.m. called the Senate to order as In Legislative Session.

Question—Shall Floor Amendment No. 15 to **C.S.H.B. 1863** be adopted?

(Senator Turner in Chair)

(President in Chair)

Senator Sibley offered the following amendment to Floor Amendment No. 15:

#### Floor Amendment No. 15A

Amend Floor Amendment No. 15 to **C.S.H.B. 1863** as follows:

On page 2 line 26 strike Section 302.021 and replace it with a new section that would read:

Sec. 302.021 Commissioner. (a) The governor shall appoint the commissioner.

SIBLEY  
BIVINS

The amendment to Floor Amendment No. 15 was read.

Senator Ellis moved to table Floor Amendment No. 15A.

The motion to table Floor Amendment No. 15A was lost by the following vote: Yeas 11, Nays 20.

Yeas: Barrientos, Ellis, Gallegos, Luna, Moncrief, Montford, Rosson, Turner, West, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Cain, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Truan, Wentworth.

Question—Shall Floor Amendment No. 15A to Floor Amendment No. 15 be adopted?

Senator Armbrister offered the following substitute for Floor Amendment No. 15A:

**Floor Amendment No. 16**

Substitute the following for Floor Amendment No. 15A to **C.S.H.B. 1863**:

On page 2 line 26 strike Section 302.021 and replace it with a new section that would read:

Sec. 302.021 Commissioner. (a) The governor, with the consent of the Senate, shall appoint the commissioner.

Floor Amendment No. 16 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 15A as substituted, the amendment as substituted was adopted by a viva voce vote.

**RECORD OF VOTE**

Senator Ellis asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 15A as substituted.

Senator Barrientos offered the following amendment to Floor Amendment No. 15:

**Floor Amendment No. 15B**

Amend Floor Amendment No. 15 to **C.S.H.B. 1863** as follows:

Strike page 16, line 8 through page 19, line 7.

The amendment to Floor Amendment No. 15 was read.

On motion of Senator Barrientos and by unanimous consent, Floor Amendment No. 15B was withdrawn.

Question recurring on the adoption of Floor Amendment No. 15 as amended, the amendment as amended was adopted by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Bivins, Brown, Ellis, Harris, Haywood, Henderson, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Ratliff, Shapiro, Sibley, Sims, Turner, Wentworth, Zaffirini.

Nays: Barrientos, Cain, Gallegos, Galloway, Leedom, Patterson, Rosson, Truan, West, Whitmire.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1863 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 1863** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**GUESTS PRESENTED**

Senator Patterson was recognized and introduced to the Senate a delegation of citizens from Friendswood and members of the Friendswood City Council.

The Senate welcomed its guests.

**GUEST PRESENTED**

The President introduced to the Senate Representative Senfronia Thompson of Houston.

The Senate welcomed Representative Thompson.

**GUESTS PRESENTED**

Senator Truan was recognized and introduced to the Senate a delegation of citizens from Hidalgo County.

The Senate welcomed its guests.

**SENATE CONCURRENT RESOLUTION 132**

Senator Sibley offered the following resolution:

WHEREAS, The Legislature of the State of Texas is honored to pay tribute today to one of the state's most esteemed citizens, Judge Abner McCall, who will be celebrating his 80th birthday on June 8, 1995; and

WHEREAS, This distinguished gentleman was born on June 8, 1915, in Perrin in Jack County; when he was quite young, his father died, and his mother was left to care for a family of four small children; and

WHEREAS, When his mother's health worsened, he and his brothers and sister were sent to the Fort Worth Masonic Home and School; early realizing the importance of education, he graduated from there in 1933 as valedictorian of his class; and

WHEREAS, This outstanding student received a Masonic scholarship to attend Baylor University, intending to become a lawyer; and

WHEREAS, Abner McCall worked his way through college mowing lawns, working in the business office, and selling tickets to school activities; after graduating at the head of his law school class in 1938, he scored higher on the bar exam than any previous examinee; and

WHEREAS, An impressed Baylor President Neff offered him a job teaching in the law school which he accepted; he had previously worked in Longview where he met his first wife, Frances Bortle; they were married in 1940 and together they made a home and raised four energetic and intelligent children: Anne, Bette Gail, Richard Vernon, and Kathleen; Frances predeceased him in 1969, and in 1970 he wed Mary W. Russell of Waco; and

WHEREAS, In 1943, he joined the Federal Bureau of Investigation as a special agent working to apprehend deserters, draft dodgers, and escaped prisoners of war; and

WHEREAS, In 1948, Abner McCall was appointed Dean of Baylor Law School, the youngest dean in the history of the law school; in 1956, Governor Allan Shivers named Dean McCall to fill an interim position on the Texas Supreme Court; and

WHEREAS, When his term was finished, he returned to his beloved Baylor as he said he would; and

WHEREAS, A man of rare ability and unquestioned integrity, he served as the Dean of Baylor Law School from 1948 through 1959; he was promoted to Executive Vice-President in 1959, and in 1961 he became President of Baylor University; Judge McCall served as Chancellor from 1981 until 1985; and

WHEREAS, Under his leadership, Baylor University increased its academic stature, national reputation, and capital assets; the size of its campus increased from about 40 acres to about 300 acres and student enrollment rose to around 10,000; he also hired Jack Patterson in 1970 as Athletic Director, and he hired Grant Teaff, the outstanding Baylor football coach; in 1963 he began Baylor's development program in order to increase the university's endowment which has increased to over \$130 million; and

WHEREAS, Throughout his meritorious career, his service to education has taken many different forms; he served on the Board of Trustees of the Waco Independent School District and on the Steering Committee of the Waco Adopt A School; he helped organize and was second president of the Independent Colleges and Universities of Texas, Incorporated; he served as a Trustee of the Masonic Home Independent School District, and he has received so many honors and awards that a list of them would fill several pages; and

WHEREAS, A man of strong religious convictions, Judge McCall has worked devotedly on behalf of the Southern Baptist Convention, which he served as vice president and in support of the Baptist General Convention of Texas, which he served as President; he has been an active member of First Baptist Church in Waco, where he has also served as Deacon and taught a Bible Study class; and

WHEREAS, An excellent example of what one man can achieve, Judge McCall has been accorded the highest of honors among his peers; he has been appointed to the Texas Judicial Council by several different Texas governors; he was appointed to serve as Texas Commissioner on the Education Commission for the States; and

WHEREAS, His unequaled record of personal and professional contributions to his church, university, city, and state have made this notable gentleman a treasured asset; now, therefore, be it

RESOLVED, That the 74th Legislature of the State of Texas hereby commend the life and the career of Judge Abner McCall and wish him a happy 80th birthday; and, be it further

RESOLVED, That a copy of this resolution be prepared for him as an expression of the highest esteem of the Texas Legislature.

The resolution was read.

On motion of Senator Truan and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Sibley and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

#### **GUESTS PRESENTED**

Senator Sibley was recognized and introduced to the Senate Judge Abner McCall and his wife, Mary, of Waco.

The Senate welcomed its distinguished guests.

#### **GUESTS PRESENTED**

Senator Ratliff was recognized and introduced to the Senate a group of engineering students from Texas A&M University.

The Senate welcomed its guests.

#### **MESSAGE FROM THE HOUSE**

House Chamber

April 25, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

**S.B. 965**, Relating to hospital staff membership and privileges for physicians, podiatrists, and dentists.

**S.B. 786**, Relating to the student fee for the university center at the University of Houston. (As amended)

**H.C.R. 177**, Honoring the secretaries of the Texas House of Representatives and Senate on Secretaries Day.

**H.C.R. 174**, Honoring the city of Friendswood's Centennial Celebration.

Respectfully,

Cynthia Gerhardt, Chief Clerk  
House of Representatives

**GUESTS PRESENTED**

Senator Zaffirini was recognized and introduced to the Senate a delegation of Webb County officials.

The Senate welcomed its guests.

**GUESTS PRESENTED**

Senator Gallegos was recognized and introduced to the Senate the Edison Middle School Mariachi Band of Houston.

The Senate welcomed its guests.

**GUEST PRESENTED**

The President introduced to the Senate United States Congressman Ken Bentsen of Houston.

The Senate welcomed Congressman Bentsen.

**GUEST PRESENTED**

Senator Moncrief was recognized and introduced to the Senate Officer Lisa Chic of the Fort Worth Police Department.

The Senate welcomed Officer Chic.

**MESSAGE FROM THE HOUSE**

House Chamber  
April 25, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

**H.B. 466**, Relating to the compilation and use of information pertaining to criminal combinations; providing a penalty.

**H.B. 673**, Relating to the assignment of a former statutory probate court judge.

**H.B. 943**, Relating to performance audits of certain metropolitan transit authorities.

**H.B. 1637**, Relating to the duty of a landlord to provide smoke detectors in leased residential premises.

**H.B. 1824**, Relating to rates for water supply or sewer services charged by the City of El Paso to residents of a certain area of El Paso County.

**H.B. 2021**, Relating to the certification of certain health organizations to contract with or employ certain health practitioners.

**H.B. 3003**, Relating to the control and eradication of cotton pests by the Department of Agriculture.

Respectfully,

Cynthia Gerhardt, Chief Clerk  
House of Representatives

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 128**

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas  
April 25, 1995

Honorable Bob Bullock  
President of the Senate

Honorable James E. "Pete" Laney  
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 128** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MONCRIEF  
MONTFORD  
WHITMIRE  
ROSSON  
BROWN

On the part of the Senate

GREENBERG  
DANBURG  
THOMPSON  
NIXON  
PITTS

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to certain evidentiary and procedural privileges and requirements for certain criminal cases.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

SECTION 1. Article 23.03, Code of Criminal Procedure, is amended by adding Subsection (d) to read as follows:

(d) A summons issued to any person must clearly and prominently state in English and in Spanish the following:

"It is an offense for a person to intentionally influence or coerce a witness to testify falsely or to elude legal process. It is also a felony offense to harm or threaten to harm a witness or prospective witness in retaliation for or on account of the service of the person as a witness or to prevent or delay the person's service as a witness to a crime."

SECTION 2. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.10 to read as follows:

Art. 38.10. EXCEPTIONS TO THE SPOUSAL ADVERSE TESTIMONY PRIVILEGE. The privilege of a person's spouse not to be called as a witness for the state does not apply in any proceeding in which the person is charged with a crime committed against the person's spouse, a minor child, or a member of the household of either spouse.

SECTION 3. Subsection (a), Section 23.101, Government Code, is amended to read as follows:

(a) The trial courts of this state shall regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of the following:

(1) temporary injunctions;

(2) criminal actions, other than those listed by Subdivision (7), with the following actions ~~criminal actions against defendants who are detained in jail pending trial~~ given preference over other criminal actions;

(A) criminal actions against defendants who are detained in jail pending trial; and

(B) criminal actions involving a charge that a person committed an act of family violence, as defined by Section 71.01, Family Code;

(3) election contests and suits under the Election Code;

(4) orders for the protection of the family under Section 3.581, 71.11, or 71.12, Family Code;

(5) appeals of final rulings and decisions of the Texas Workers' Compensation Commission and claims under the Federal Employers' Liability Act and the Jones Act;

(6) ~~[suits for declaratory judgment under Section 89.085, Natural Resources Code; and~~

~~[(7)]~~ appeals of final orders of the commissioner of the General Land Office under Section 51.3021, Natural Resources Code; and

(7) an offense under:

(A) Section 21.11, Penal Code;

(B) Chapter 22, Penal Code, if the victim of the alleged offense is younger than 17 years of age;

(C) Section 25.02, Penal Code, if the victim of the alleged offense is younger than 17 years of age; or

(D) Section 25.06, Penal Code.

SECTION 4. Subchapter B, Chapter 41, Government Code, is amended by adding Section 41.110 to read as follows:

Sec. 41.110. TRAINING RELATED TO FAMILY VIOLENCE. The court of criminal appeals shall adopt rules regarding the training of prosecuting attorneys relating to cases involving a charge that a person committed an act of family violence as defined by Section 71.01, Family Code.

SECTION 5. The Court of Criminal Appeals shall adopt the rules required by Section 41.110, Government Code, as added by this Act, not later than January 1, 1996.

SECTION 6. Under the terms of Subsection (b), Section 22.109, Government Code, Rule 504(2)(b)(1), Texas Rules of Criminal Evidence, is disapproved.

SECTION 7. The law is effective September 1, 1995.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is



hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

#### **FLOOR PRIVILEGES GRANTED**

On motion of Senator Armbrister and by unanimous consent, floor privileges were granted to members of his staff during the deliberation of **C.S.S.B. 373**.

On motion of Senator Rosson and by unanimous consent, floor privileges were granted to members of her staff during the deliberation of **C.S.S.B. 373**.

**(Senator Truan in Chair)**

#### **COMMITTEE SUBSTITUTE SENATE BILL 373 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**C.S.S.B. 373**, Relating to the continuation, operations, and functions of the Public Utility Commission of Texas and the Office of Public Utility Counsel; providing penalties.

The bill was read second time.

Senator Nelson offered the following amendment to the bill:

#### **Floor Amendment No. 1**

Amend **C.S.S.B. 373** by striking SECTION 1.33 of the bill (committee printing page 15, line 61, through page 16, line 21) and renumbering subsequent sections appropriately.

The amendment was read.

Question—Shall Floor Amendment No. 1 to **C.S.S.B. 373** be adopted?

**AT EASE**

The Presiding Officer at 3:38 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

#### **IN LEGISLATIVE SESSION**

The President at 4:07 p.m. called the Senate to order as In Legislative Session.

Question—Shall Floor Amendment No. 1 to **C.S.S.B. 373** be adopted?

The amendment was adopted by the following vote: Yeas 16, Nays 15.

Yeas: Armbrister, Bivins, Brown, Galloway, Harris, Haywood, Henderson, Leedom, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Wentworth.

Nays: Barrientos, Cain, Ellis, Gallegos, Lucio, Luna, Madla, Moncrief, Montford, Rosson, Truan, Turner, West, Whitmire, Zaffirini.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 1C**

Amend C.S.S.B. 373 by adding the following:

Sec. 1.407. Historically Underutilized Businesses. (a) The Commission by rule shall require each utility to make a good faith effort to assist historically underutilized businesses to receive a corresponding percentage of the total value of all contract awards that the utility expects to make during a fiscal year, taking into account the availability of historically underutilized businesses, as found by the disparity study conducted under Chapter 684 (H.B. 2626), Acts of the 73rd Legislature, 1993. The rules must take into account different disparity ratios shown for different race and sex groups.

(b) The commission shall conduct further research and analysis to adjust the results of the disparity study as necessary to account for specific underuse of historically underutilized businesses by the utility industry.

(c) The rules adopted under this section must require each utility to prepare and submit to the commission a strategic plan for use of historically underutilized businesses.

(d) In this section:

(1) "Historically underutilized business" means a business entity at least 51 percent of which is owned by minority group members, or in the case of a corporation, at least 51 percent of the shares of which are owned, managed, and controlled by minority group members.

(2) "Minority group members" include:

(A) African Americans;

(B) American Indians;

(C) Asian Americans;

(D) Mexican Americans and other Americans of Hispanic origin; and

(E) women.

The amendment was read and was adopted by the following vote:  
Yeas 17, Nays 14.

Yeas: Armbrister, Barrientos, Cain, Ellis, Gallegos, Lucio, Luna, Madla, Moncrief, Montford, Rosson, Sims, Truan, Turner, West, Whitmire, Zaffirini.

Nays: Bivins, Brown, Galloway, Harris, Haywood, Henderson, Leedom, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Wentworth.

Senator Brown offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend C.S.S.B. 373 in Section 2.07 by deleting Subsection 2.056(b) and substituting the following new Subsection in its place.

(b) The commission, with the advice and consent of the Governor, shall appoint a five-person Interstate Connection Committee to investigate the most economical, reliable, and efficient means to synchronously interconnect the alternating current electric facilities of the electric facilities of electric utilities within the Electric Reliability Council of Texas reliability area to the alternating current electric facilities of the electric facilities of electric utilities within the Southwest Power Pool reliability area. The committee shall report an estimate of the cost and benefit to effect the interconnection, an estimate of the time to construct the interconnecting facilities, and the service territory of the utilities in which those facilities will be located. The committee shall submit its report to the Legislature by September 1, 1997, at which time the committee shall be dissolved.

The amendment was read and was adopted by a viva voce vote.

**Floor Amendment No. 3 was not offered.**

Senator Rosson offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend Section 1.08 of the committee printing for **C.S.S.B. 373** by deleting subsection (a) (page 4, beginning at line 21 and ending at line 32) and substituting in lieu thereof the following:

**Section 1.025 POST-EMPLOYMENT PROHIBITION OF REPRESENTATION**

(a) A commissioner, may not within two years, and an employee of the commission, or an employee of the State Office of Administrative Hearings involved in hearing utility cases may not, within one year after his employment with the commission or the State Office of Administrative Hearings has ceased, be employed by a public utility which was in the scope of the commissioner's or employee's official responsibility while the commissioner or employee was associated with the commission or the State Office of Administrative Hearings.

The amendment was read.

Senator Wentworth offered the following substitute for Floor Amendment No. 4:

**Floor Amendment No. 4A**

Substitute the following for Floor Amendment No. 4 to **C.S.S.B. 373**:

**SECTION 1.08.** Section 1.025, Public Utility Regulatory Act of 1995, as enacted by **S.B. 319**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

**Sec. 1.025. PROHIBITION OF EMPLOYMENT OR REPRESENTATION.** (a) A commissioner, an employee of the commission, or an employee of the State Office of Administrative Hearings involved in hearing utility cases shall comply with Section 572.054, Government Code. For purposes of the application of Section 572.054,

~~Government Code, only an employee of the State Office of Administrative Hearings involved in hearing utility rate cases is considered an employee of the commission [may not within two years, and an employee may not, within one year after his employment with the commission has ceased, be employed by a public utility which was in the scope of the commissioner's or employee's official responsibility while the commissioner or employee was associated with the commission].~~

~~(b) [During the time a commissioner or employee of the commission is associated with the commission or at any time after, the commissioner or employee may not represent a person, corporation, or other business entity before the commission or a court in a matter in which the commissioner or employee was personally involved while associated with the commission or a matter that was within the commissioner's or employee's official responsibility while the commissioner or employee was associated with the commission.~~

~~[(c)]~~ The commission shall require its members and employees to read this section and Section 1.024 of this Act and as often as necessary shall provide information regarding their responsibilities under applicable laws relating to standards of conduct for state officers and employees.

The substitute for Floor Amendment No. 4 was read and failed of adoption by the following vote: Yeas 14, Nays 17.

Yeas: Galloway, Haywood, Henderson, Leedom, Lucio, Madla, Montford, Nelson, Patterson, Ratliff, Shapiro, Sibley, Sims, Wentworth.

Nays: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Harris, Luna, Moncrief, Nixon, Rosson, Truan, Turner, West, Whitmire, Zaffirini.

Question recurring on the adoption of Floor Amendment No. 4, the amendment was adopted by a viva voce vote.

**Floor Amendment No. 5 was not offered.**

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 5A**

Amend C.S.S.B. 373 as follows:

(1) Section 2.001, Public Utility Regulatory Act of 1995, as amended by the bill, is amended to read as follows:

Sec. 2.001. LEGISLATIVE POLICY CONCERNING REGULATION OF THE ELECTRIC UTILITY INDUSTRY. (a) This title is enacted to protect the public interest inherent in the rates and services of public utilities. The legislature finds that public utilities are by definition monopolies in many of the services they provide and in many of the areas they serve, and that therefore the normal forces of competition that operate to regulate prices in a free enterprise society do not always operate, and that therefore, except as otherwise provided for in this act, utility rates, operations, and services are regulated by public agencies ~~[where competition does not operate]~~. The purpose of this title is to establish a

comprehensive regulatory system that is adequate to the task of regulating public utilities as defined in this title, to assure rates, operations, and services that are just and reasonable to consumers and to the utilities. Retail electric service maintains the attributes that make regulation of monopolies appropriate. The legislature finds that the wholesale electric industry through federal legislative, judicial, and administrative actions is becoming a more competitive industry which does not lend itself to traditional electric utility regulatory rules, policies, and principles; and that, therefore, the public interest requires that new rules, policies, and principles be formulated and applied to protect the public interest in a more competitive marketplace. The development of a competitive wholesale electric market that allows for increased participation by both utilities and certain non-utilities is in the public interest. [To promote the development of the competitive wholesale electric market, the public interest warrants open transmission access for wholesale transactions and allowing participation in the generation market by certain non-utilities.]

(b) Following adoption by the commission of rules implementing the consumer and competitive safeguards included in subparagraphs (1) through (4) of this subsection and only when the utility has excess generation capacity, an electric utility may charge individual customers for wholesale electric service at a price that is lower than the wholesale rate approved by a regulatory authority, but equal to or greater than the greater of fifty percent of the demand-related cost included in such rate or the utility's marginal costs. Nothing in this subsection, however, shall affect the ability of electric utilities to enter into emergency energy transactions. Within 180 days from the effective date of this section, the commission shall make and enforce rules sufficient to ensure that a utility's allocable costs of serving customers paying discounted wholesale prices are not borne by the utility's other customers. Such rules shall provide for the following:

(1) All revenues associated with discounted wholesale sales shall be separately accounted for and credited to the utility's other customers;

(2) rules of conduct pertaining to information transfers, separation of personnel, operating procedures and other matters the commission finds necessary to ensure that third parties receiving services from the utility are not disadvantaged relative to the utility when it makes discounted wholesale sales;

(3) accounting standards (including maintenance of separate books, if necessary), reporting requirements and other provisions necessary to enforce the commission's responsibilities under this subsection; and

(4) discounted wholesale sales may only be made when the firm capacity available to the utility is in excess of its applicable reserve requirements for the duration of the sale.

(2) Amend SECTION 2.08, page 29, line 58, of C.S.S.B. 373 to read as follows:

Section 2.08. Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended

to add the following sentence after "circumstances" page 29, line 58.  
The rules shall also provide that all ancillary services associated with a utility's discounted wholesale sales shall be provided by the utility at the same prices and under the same terms and conditions as such services are provided to third persons, and all ancillary services provided by the utility and associated with its discounted wholesale sales also be provided to third persons upon request;

(3) Amend SECTION 2.14, page 31, line 31 of **C.S.S.B. 373** to read as follows:

Section 2.14. Subsection (b), Section 2.154, Public Utility Regulatory Act of 1995, as enacted by **C.S.S.B. 373**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(b) Every public utility shall file with, and as a part of such schedules, all rules and regulations relating to or affecting the rates, public utility service, product, or commodity furnished by such utility. Prices being charged to individual customers for electric service need not be filed with the regulatory authority, but shall be provided in a general rate case or upon written order of the commission. The regulatory authority shall consider any price to an individual customer filed with it as a trade secret document. Such information shall not be subject to disclosure under the open records law, Chapter 552, Government Code.

(4) Amend **C.S.S.B. 373** by adding a new Section 2.16 and renumbering subsequent sections as follows, beginning page 34, line 17, and redesignating subsequent sections:

Section 2.16. Section 2.202, Public Utility Regulatory Act of 1995, as enacted by **C.S.S.B. 373**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Section 2.202. JUST AND REASONABLE RATES. It shall be the duty of the regulatory authority to insure that every rate made, demanded, or received by any electric utility, or by any two or more electric utilities jointly, shall be just and reasonable. Rates approved by the regulatory authority may not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of consumers. Prices that are charged to individual customers for electric service may be no higher than the rate approved by the regulatory authority and shall be in accordance with the provisions of Sec. 2.001 of this Act. For ratemaking purposes, the commission may treat two or more municipalities served by an electric utility as a single class wherever it deems such treatment to be appropriate.

(5) Amend **C.S.S.B. 373** by adding a new SECTION 2.20 as follows, beginning on page 37, line 16, and redesignating subsequent sections:

SECTION 2.20. Section 2.214, Public Utility Regulatory Act of 1995, as enacted by **S.B. 319**, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Section 2.214. UNREASONABLE PREFERENCE OR PREJUDICE AS TO RATES OR SERVICES. An electric utility may not, as to rates or services, make or grant any unreasonable preference or advantage to any

corporation or person within any classification, or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage. An electric utility may not establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service. Prices that are charged to individual customers for electric service that are less than the rates approved by the regulatory authority and in accordance with Sec. 2.001 of this Act shall not constitute an impermissible difference, preference, or advantage.

(6) Amend C.S.S.B. 373 by adding a new SECTION 2.20 (line 20, page 37) as follows and redesignating subsequent sections as appropriate:

SECTION 2.20. Subsection (a), Section 2.215, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 2.215. EQUALITY OF RATES AND SERVICES. (a) An electric utility may not, directly or indirectly, by any device whatsoever or in any manner, charge, demand, collect, or receive from any person a greater compensation for any service rendered or to be rendered by the electric utility than that prescribed in the schedule of rates of the utility applicable thereto when filed in the manner provided in this Act, nor may any person knowingly receive or accept any service from an electric utility for a compensation greater than that prescribed in the schedules provided that it is lawful for a utility to charge individual customers a price for electric service that is in accordance with Sec. 2.001 of this Act and for a person to pay such price as authorized by this Act.

(7) Amend SECTION 1.01 of C.S.S.B. 373 as follows (page 1, line 22):

Section 1.003, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended by amending Subdivision (14) to read as follows:

(14) "Rates," means and includes every compensation, tariff, charge, fare, toll, rental, and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any public utility for any service, product, or commodity described in the definition of "utility" in Section 2.001 or 3.001 of this Act and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification, that must be approved by a regulatory authority. Prices as defined in Section 2.0011 of this Act that are charged to individual customers for electric service shall not be considered a "rate."

(8) Amend SECTION 2.01 of C.S.S.B. 373 as follows (page 20, line 28):

Section 2.0011, Public Utility Regulatory Act of 1995, as added by the bill, is amended by adding Subdivision (6) to read as follows:

(6) In this title, "price" shall be any charge to a customer for wholesale electric service that is at or lower than a rate approved by a regulatory authority.

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 6**

Amend SECTION 1.25 of C.S.S.B. 373 (page 12, line 10, committee printing) to add a new subsection (a)(1), Section 1.202, Public Utility Regulatory Act of 1995, to read as follows:

(1) require that public utilities report to it such information relating to transactions between themselves and affiliated interests both within and without the State of Texas to the extent that those transactions are subject to the jurisdiction of the commission ~~[as it may consider useful in the administration of this Act];~~

Amend SECTION 1.27 of C.S.S.B. 373 (page 12, line 62) to add a new Section 1.271, Public Utility Regulatory Act of 1995, to read as follows:

Sec. 1.271. JURISDICTION OVER AFFILIATED INTERESTS. The commission shall have jurisdiction over ~~[affiliated interests having]~~ transactions between [with] public utilities under the jurisdiction of the commission and affiliated interests to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to such transactions. Any accounts or records obtained by the commission related to sales of electrical energy at wholesale by an affiliated interest to the public utility shall be confidential and not subject to disclosure under Chapter 552, Government Code.

The amendment was read and was adopted by the following vote:  
Yeas 28, Nays 3.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Turner, West, Whitmire, Zaffirini.

Nays: Barrientos, Truan, Wentworth.

Senator Bivins offered the following amendment to the bill:

**Floor Amendment No. 7**

Amend SECTION 2.03 of C.S.S.B. 373 (page 27, line 37, committee printing) to add subsection (dd), Section 2.051, Public Utility Regulatory Act of 1995, to read as follows:

(dd) To provide for the orderly transition to an integrated resource planning process and to avoid delays in the construction of resources necessary to provide electric service, an integrated resource plan shall not be required prior to the issuance of a certificate of convenience and necessity for the construction of generating facilities if:

(1) the commission has approved the utility's notice of intent prior to the effective date of this section;



(2) the utility has conducted a solicitation for resources to meet the need identified in the utility's notice of intent in accordance with commission rules then in effect and;

(3) the utility has submitted to the commission the results of the solicitation and an application for certification of facilities to meet the need identified in the utility's notice of intent. A certificate of convenience and necessity shall be granted by the commission if the facilities are needed to meet future demand, the facilities are the best and most economical choice of technology for the service area, and cost effective conservation and cost effective alternative energy sources cannot reasonably meet the need.

The amendment was read and was adopted by a viva voce vote.

#### RECORD OF VOTE

Senator Truan asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 7.

Senator Ratliff offered the following amendment to the bill:

#### Floor Amendment No. 8

Amend C.S.S.B. 373, Section 2.03, by amending Sec. 2.051(a) and inserting a new subsection (b) as follows and renumbering subsequent subsections, as appropriate:

Sec. 2.051 INTEGRATED RESOURCE PLANNING. (a) The commission by rule shall develop an integrated resource process to provide reliable energy service at the lowest reasonable cost. In determining the lowest reasonable cost of an electric utility's plan, the commission shall consider in addition to direct costs, the following:

(1) the effect on the rates [~~and bills~~] of various types of customers;

~~[(2) the minimization of the risks of future fuel costs and regulations;~~

~~[(3)]~~ (2) the appropriateness and reliability of the mix of resources and;

~~[(4)]~~ (3) the costs of compliance with the environmental protection requirements of all applicable state and federal laws, rules and orders.

(b) For purposes of this section, the commission shall not consider environmental costs beyond the cost of compliance.

The amendment was read.

(Senator Montford in Chair)

(Senator Ellis in Chair)

#### POINT OF ORDER

Senator Henderson raised a point of order that Floor Amendment No. 8 was in violation of Senate Rule 7.16 which requires that any amendment to any tax bill or sunset bill on second reading must first be discussed in a Senate committee meeting at which the bill was heard.

The Presiding Officer stated that the point of order was respectfully overruled.

Question—Shall Floor Amendment No. 8 to C.S.S.B. 373 be adopted?

(President in Chair)

On motion of Senator Armbrister, Floor Amendment No. 8 was tabled by the following vote: Yeas 21, Nays 7, Present-not voting 3.

Yeas: Armbrister, Barrientos, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Henderson, Lucio, Luna, Madla, Nelson, Patterson, Rosson, Sims, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Haywood, Leedom, Nixon, Ratliff, Shapiro, Sibley, Turner.

Present-not voting: Bivins, Moncrief, Montford.

Senator Rosson offered the following amendment to the bill:

**Floor Amendment No. 9**

Amend the committee printing for C.S.S.B. 373 by adding a new Section 2.059 to the Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995 as new SECTION 2.09 (on page 30 between lines 31 and 32) to read as follows:

SECTION 2.09 Sec. 2.059 ELECTRIC UTILITIES; REGULATION OF COMPETITION (a) It is the policy of this state to protect the public interest in having adequate and efficient electric service available to consumers at just, fair, and reasonable rates. The legislature finds that the electric industry, through technical advancements, federal legislative and administrative actions, and the formulation of new electric enterprises, can become in many and growing areas a competitive industry that does not lend itself to traditional public utility regulatory rules and policies; and that therefore, the public interest requires that new rules and policies be formulated and applied to protect the public interest and to provide equal opportunity to all electric service providers in a competitive marketplace. It is the purpose of this section to grant to the commission the authority to carry out the public policy herein stated.

(b) For the purpose of carrying out the public policy stated in subsection (a) of this section, and any other section of this Act notwithstanding, the commission is granted all necessary power and authority to promulgate rules and establish procedures applicable to public utilities to facilitate the development of competition consistent with the public interest and, where the commission determines that sufficient competition exists in specific electric markets or submarkets, to provide appropriate regulatory treatment to allow electric utilities to respond to significant competitive challenges. Nothing in this section is intended to change the burden of proof of an electric utility under Sections 2.202, 2.203, 2.204, 2.205, 2.206, 2.207, and 2.208 of Title II of this Act, for services that are not subject to such competitive challenges.

(c) In promulgating rules and policies under this section, the commission shall seek to balance the public interest in a technologically

advanced electric system providing services that are attractive to consumers with traditional regulatory concerns for preserving the quality and availability of service, prohibiting anti-competitive pricing and practices, preventing the subsidization of competitive services with revenues from regulated monopoly services, and maintaining rates that are not unreasonably preferential, prejudicial, or discriminatory, and that are not subsidized either directly or indirectly by regulated monopoly services. The commission shall promulgate these rules and procedures so as to incorporate an appropriate mix of regulatory and market mechanisms reflecting the level and nature of competition in the marketplace.

Renumber subsequent SECTIONS accordingly.

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 10**

Amend SECTION 2.04 of C.S.S.B. 373 (page 28, line 35 committee printing) by adding subsections (c) through (l) to read as follows:

(c) The retail rates of an electric utility shall be approved by the regulatory authority in accordance with the principles of this Act to assure that they are just and reasonable. The electric utility, at its option, however, has the legal authority to charge individual customers for electric service at a price that is lower than the rate approved by a regulatory authority but equal to or greater than the marginal cost of the utility as provided in this subsection. The net present value of prices charged pursuant to this subsection (c) must equal or exceed the net present value of the marginal cost of the utility for each customer for the term of the customer contract for which a price is offered and shall only be applicable for service to:

(1) the existing load of an existing customer of the utility, and further provided the customer demonstrates to the utility that, without the offered price, it will cease receiving service from the utility or reduce its load as a result of switching to alternative energy sources, switching to service by another electric utility, self generation, cogeneration, relocation, closure, or shutdown. An electric utility may not provide electric service at a price less than its approved rate to any existing customer load in a multi-certificated service area unless the customer is connected to and has taken service from the utility continuously for the previous 30 months;

(2) the existing load of an existing customer of the utility operating a marginal oil or gas property, if the customer demonstrates to the utility that a price that is lower than the rate approved by a regulatory authority will extend the economic life of the marginal oil or gas property. An electric utility may not, however, provide electric service at a price less than its approved rate to any marginal oil or gas property in a multi-certificated service area unless the customer is connected to and has taken service from the utility continuously for the previous 30 months. A marginal oil and gas property means any well or group of wells and related

facilities located within the service area of a utility serviced by the electrical meter of a utility that produced on average either:

(A) 15 barrels of oil equivalent or less per well during the preceding 12 months based upon the records of the Texas Railroad Commission; or

(B) 25 barrels of oil equivalent or less per well and the average water cut is equal to or greater than 95% during the preceding 12 months based upon the records of the Texas Railroad Commission; or

(C) any enhanced oil recovery project;

(3) the new load, if located in the singly certificated service area of the utility, of a new or existing customer, provided the customer demonstrates to the utility that without the offered price, the new customer will not take service from the utility for such new load.

(d) No electric utility shall, pursuant to this subsection, offer, demand, charge, or receive for retail electric service a price that is lower than the rate approved by a regulatory authority for service to new load of a new customer if the load is located in a multi-certificated service area. An electric utility may not provide electric service at a price less than its approved rate to any existing customer of another utility in a multi-certificated service area, or to any customer load in a multi-certificated service area that was connected to and received service from another electric utility at any time during the previous 36 months.

(e) A price in accordance with subsection (c) shall only be available to a customer in a multi-certificated service area receiving service at 480 volts or higher. A price in accordance with subsection (c) shall only be available for a term of 120 months or less.

(f) If an electric utility charges a price in accordance with subsection (c) of this section for retail electric utility service that is lower than the rate approved by a regulatory authority it shall submit the following information to the commission at least 35 days prior to the proposed implementation of the price:

(1) the customer contract including name and address of the customer;

(2) an analysis demonstrating that the price is within the range of prices allowed under this section;

(3) the approved rate that would be applicable in the absence of any such lower price;

(4) whether the load is a new or existing load, whether the customer is a new or existing customer, that the load is located in a singly-certificated service area or in a multi-certificated service area;

(5) the number of months the load has been continuously connected to and served by the utility;

(6) if the load is located in a multi-certificated area, the commission shall require sworn affidavits stating each of the particular facts within affiant's personal knowledge necessary to establish that the customer qualifies for the price and that the price meets the criteria of this section; and

(7) if the load is located in a multi-certificated service area, a sworn affidavit of the affiant's personal knowledge that the utility has concurrently notified any other electric utilities having authority to provide retail service to the load, and such other information as may be determined by the commission.

(g) The commission shall have exclusive original jurisdiction to review any price proposed by an electric utility pursuant to subsection (c) of this section. To assure compliance with the criteria of this section, for prices proposed to be charged for service to loads in multi-certificated areas, the commission shall within 60 days after the effective date of this section, establish procedures for administrative review. The commission shall determine compliance with subsections (c), (d), (e) and (f) of this section including whether the price is within the range of prices allowed as well as eligibility of the customer and load for the proposed price. The commission may reserve other issues to be determined in later proceedings. In establishing procedures, the commission shall provide for suspension of implementation of a price for a period of 60 days, if the commission finds a reasonable need for additional time for an affected person, including a competing utility, to investigate the utility's compliance with this section. If the commission determines that a violation of subsections (c), (d), (e) or (f) has occurred the commission shall disallow the price. Otherwise the price shall be approved. Any final administrative action shall be appealable to the commission by any party.

(h) Prior to its first integrated resource plan filing, electric utilities desiring to charge a price pursuant to this section shall, except as provided in subsection (i), file with the commission a methodology for calculation of its marginal cost. The methodology for calculating the marginal cost of the electric utility shall consist of energy and capacity components. The energy component shall include variable operation and maintenance expense and marginal fuel or the energy component of purchased power. The capacity component included shall be based on the annual economic value of deferring, accelerating, or avoiding the next increment of any needed capacity whether such capacity is purchased or built. The commission shall ensure the methodology for determining marginal cost is consistently applied among utilities but may recognize in any case the individual load and resource requirements of the utility. The commission shall determine the marginal cost for each utility within 180 days after an application is filed, however, no application for approval of marginal cost shall be deemed to have been filed less than 90 days after the effective date of this section. If the commission does not approve the marginal cost within the time prescribed, then the filed marginal cost shall be deemed approved.

(i) For utilities that do not file an integrated resource plan, or do not generate electricity the marginal cost shall be the lowest marginal cost of any of the utility's wholesale power suppliers unless otherwise determined by the commission upon application by the utility.

(j) The commission shall periodically redetermine an electric utility's marginal cost in connection with approval of the utility's integrated resource plan under Section 2.052 of this Act.

(k) Nothing contained in this section shall have the effect of limiting the authority of the regulatory authority to change the rates or establish new rates of electric utilities as provided for in other sections of this act. Nor shall the validity of any lawful rate previously set by a regulatory authority be affected by this section.

(l) Generating and transmission electric cooperatives have the legal authority, pursuant to this subsection, to charge wholesale customers for electric service at a price that is lower than the rate approved by a regulatory authority provided each of the following conditions is met:

(1) The price shall only be applicable for that portion of a distribution cooperative's retail load for which the retail price is determined pursuant to subsection (c) of this section;

(2) The price shall not be less than the generating and transmission cooperative's marginal cost for that portion of the customer's retail load for which the retail price is determined pursuant to subsection (c) of this section.

Amend SECTION 2.15 of C.S.S.B 373 (page 34, line 17, committee printing) by adding subsection (p), section 2.2011 of the Public Utility Regulatory Act of 1995, as follows:

(p) Subsections (g)(3), (k), and (l) of this section shall not apply to prices charged by an electric cooperative pursuant to Section 2.2011 of this Act.

Amend SECTION 2.14 of C.S.S.B. 373 (page 31, line 31, committee printing), subsection (b), section 2.154 of the Public Utility Regulatory Act of 1995, as follows:

(b) Every public utility shall file with each regulatory authority schedules showing all rates which are subject to the original or appellate jurisdiction of the regulatory authority and which are in force at the time for any utility service, product, or commodity offered by the utility. Every public utility shall file with, and as a part of such schedules, all rules and regulations relating to or affecting the rates, electric utility service, product, or commodity furnished by such utility. The commission shall treat customer names and addresses, prices, individual customer contracts, and expected load and usage data as highly sensitive trade secrets; such information shall not be subject to disclosure under the open records law, Chapter 552, Government Code.

Add a new SECTION 2.20 to read as follows, and renumber the remaining SECTIONS accordingly:

SECTION 2.20. Section 2.214, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 2.214. UNREASONABLE PREFERENCE OR PREJUDICE AS TO RATES OR SERVICES. No public utility may, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person within any classification, or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage. No electric utility may establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service. Prices that are charged to individual customers for retail or

wholesale electric service that are less than the rate approved by the regulatory authority shall not constitute an impermissible difference, preference, or advantage, if such lesser prices are in accordance with Section 2.052.

Add a section that amends Section 2.215(a) of the Public Utility Regulatory Act to read as follows:

Sec. 2.215(a). **EQUALITY OF RATES AND SERVICES.** (a) A public utility may not, directly or indirectly, by any device whatsoever or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the utility applicable thereto when filed in the manner provided in this Act, nor may any person knowingly receive or accept any service from a public utility for a compensation greater or less than that prescribed in the schedules provided that it is lawful for a utility to charge individual customers a price for retail or wholesale electric service that is less than the rate approved by the regulatory authority and for a person to pay such lesser price if such lesser price is in accordance with Section 2.052.

Amend SECTION 2.01, Section 2.011 of the Public Utility Regulatory Act subsections (6) and (7), to read as follows:

(6) "Rate" means and includes every compensation, tariff, charge, fare, toll, rental, and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any public utility for any service, product or commodity described in the definition of "utility" in section 2.001 or 3.001 of this Act and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification that must be approved by a regulatory authority. Prices as defined in subdivision (7) of this section shall not be considered a rate.

(7) "Price" shall be any charge to a customer for retail or wholesale electric service that is at or lower than a rate approved by a regulatory authority.

The amendment was read.

Senator Armbrister offered the following amendment to Floor Amendment No. 10:

**Floor Amendment No. 10A**

Amend Floor Amendment No. 10, amending **C.S.S.B. 373** (page 28, line 35, committee printing) by adding subsection (m) to read as follows:

(m) Rates established under this section shall not be unreasonably preferential, prejudicial, or discriminatory; subsidized either directly or indirectly by the utility's other customers; or predatory or anti-competitive. For service provided under this section, the commission shall ensure that the utility's allocable costs of serving customers paying discounted retail prices are not borne by the utility's other customers.

The amendment to Floor Amendment No. 10 was read and was adopted by a viva voce vote.

**RECORD OF VOTES**

Senators Bivins, Moncrief, and Montford asked to be recorded as "Present-not voting" on the adoption of Floor Amendment No. 10A.

Question recurring on the adoption of Floor Amendment No. 10 as amended, the amendment as amended was adopted by a viva voce vote.

**RECORD OF VOTES**

Senators Bivins, Moncrief, and Montford asked to be recorded as "Present-not voting" on the adoption of Floor Amendment No. 10 as amended.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 11**

Amend SECTION 2.08 of C.S.S.B. 373 (page 30, line 30, committee printing) Public Utility Regulatory Act of 1995, by adding new subsection 2.057(h) to read as follows and relettering the subsequent subsections:

(h) Notwithstanding any other provision of this Act, the commission shall entertain proposals for, and, from such proposals, adopt a pilot program to require a public utility, upon order of the commission, to provide transmission service to a self-generating or qualifying cogenerating customer of such public utility. Such transmission service approved by the commission shall be solely for the purpose of transmitting electricity generated by the customer from the site of generation to another site or sites 100% owned by such customer. The pilot program shall last three years from the time that the commission issues an order requiring a utility to transmit electricity pursuant to this section, after which the commission shall report to the Legislature whether there occurred any harmful effects on the utility or on its ratepayers or if any harmful effects would occur if the transmission service were to be continued. Except for the pilot program authorized by this section, the commission shall have no power or authority to:

(i) require any electric utility to transmit electricity generated by another entity over the utility's facilities to an ultimate consumer of electricity; or

(ii) issue a certificate for the construction or operation of any facility, the purpose of which includes the transmission of power between a non-utility generator and an ultimate customer.

The commission shall adopt such limits on the availability of transmission service under this provision as it finds necessary to protect ratepayers. The commission must make an affirmative finding, prior to issuing an order, that the pilot program:

(1) is in the public interest;

(2) will not adversely affect the ratepayers of the transmitting utility;

(3) does not unreasonably impair the transmitting utility's reliability;

and



(4) is priced based on the embedded cost of providing service plus a reasonable rate of return. If at any time during the course of the pilot program, the commission determines that the program is adversely affecting the ratepayers of the transmitting utility, the commission shall issue an order to terminate the program as soon as practicable.

The amendment was read.

On motion of Senator Armbrister and by unanimous consent, Floor Amendment No. 11 was temporarily withdrawn.

**(Senator Montford in Chair)**

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 12**

Amend C.S.S.B. 373 as follows:

Add a new SECTION 1.32 of the bill and renumber subsequent SECTIONs appropriately:

SECTION 1.32. Section 1.357, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, (page 40, line 21, committee printing) is added to read as follows:

SECTION 1.357. APPROVAL OF BUDGET. The budget of the commission shall be subject to legislative approval as part of the appropriations act.

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 13**

Amend C.S.S.B. 373 in Section 2.20 by adding a new section 2.214A of the Public Utility Regulatory Act of 1995 (committee printing page 37) as follows:

Sec. 2.214A. DISCOUNTED RATES FOR CERTAIN STATE INSTITUTIONS OF HIGHER EDUCATION. Notwithstanding any other provision of this Act, each public utility and municipally owned utility shall discount charges for electric service provided to any facility of any four-year state university or college. The discount shall be a twenty percent reduction of the utility's base rates that otherwise would be rendered under the applicable tariffed rate. However, if a twenty percent discount results in a reduction greater than one percent of the public or municipally owned utility's total annual revenues, the utility shall be exempt from the provisions of this subsection. Each public utility shall file tariffs with the commission reflecting the discount within 30 days of the effective date of this subsection. Such initial tariff filing shall not be considered a rate change for purposes of Section 2.212.

The amendment was read.

Senator Wentworth offered the following amendment to Floor Amendment No. 13:

**Floor Amendment No. 13A(1)**

Amend Floor Amendment No. 13 to C.S.S.B. 373 as follows:

On line 13, after "revenues" insert "or if the public or municipally owned utility, as of September 1, 1995, discounts base commercial rates for electric service provided to all four-year state universities or colleges in its service area by twenty percent or more."

WENTWORTH  
LUNA  
MADLA

The amendment to Floor Amendment No. 13 was read and was adopted by a viva voce vote.

(President in Chair)

Senator Barrientos offered the following amendment to Floor Amendment No. 13:

**Floor Amendment No. 13B**

Amend Floor Amendment No. 13 to C.S.S.B. 373 by adding the following sentence to the end of the amendment:

"This section does not apply to rates charged to a state institution of higher education by a municipally owned utility which provides a discounted rate to the state for electric services below rates in effect on January 1, 1995 and which discounted rates provide a greater financial discount to the state than is provided to the state institution of higher education through the discount provided by this section".

The amendment to Floor Amendment No. 13 was read and was adopted by a viva voce vote.

**VOTE RECONSIDERED**

On motion of Senator Wentworth and by unanimous consent, the vote by which Floor Amendment No. 13A(1) was adopted was reconsidered.

Question—Shall Floor Amendment No. 13A(1) to Floor Amendment No. 13 be adopted?

On motion of Senator Wentworth and by unanimous consent, Floor Amendment No. 13A(1) was withdrawn.

Senator Wentworth offered the following amendment to Floor Amendment No. 13:

**Floor Amendment No. 13A(2)**

Amend Floor Amendment No. 13 to C.S.S.B. 373 as follows:

On line 13, after "revenues" insert "or if the municipally owned utility, as of September 1, 1995, discounts base commercial rates for electric service provided to all four-year state universities or colleges in its service area by twenty percent or more."

WENTWORTH  
LUNA  
MADLA

The amendment to Floor Amendment No. 13 was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to Floor Amendment No. 13:

**Floor Amendment No. 13C**

Amend Floor Amendment No. 13 to **C.S.S.B. 373** by adding the following language as the last sentence of the new Section 2.214(b) of PURA:

An investor-owned public utility may not recover the assigned and allocated costs of serving a state university or college, which receives a discount under this subsection, from residential customers or any other customer class.

The amendment to Floor Amendment No. 13 was read and was adopted by a viva voce vote.

Senator Lucio offered the following amendment to Floor Amendment No. 13:

**Floor Amendment No. 13D**

Amend Floor Amendment No. 13 to **C.S.S.B. 373** as follows:

On line 9, between words "University" and "or" insert , upper-level institution.

The amendment to Floor Amendment No. 13 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 13 as amended, the amendment as amended was adopted by a viva voce vote.

Senator Armbrister again offered the following amendment to the bill:

**Floor Amendment No. 11**

Amend SECTION 2.08 of **C.S.S.B. 373** (page 30, line 30, committee printing) Public Utility Regulatory Act of 1995, by adding new subsection 2.057(h) to read as follows and relettering the subsequent subsections:

(h) Notwithstanding any other provision of this Act, the commission shall entertain proposals for, and, from such proposals, adopt a pilot program to require a public utility, upon order of the commission, to provide transmission service to a self-generating or qualifying cogenerating customer of such public utility. Such transmission service approved by the commission shall be solely for the purpose of transmitting electricity generated by the customer from the site of generation to another site or sites 100% owned by such customer. The pilot program shall last three years from the time that the commission issues an order requiring a utility to transmit electricity pursuant to this section, after which the commission shall report to the Legislature whether there occurred any harmful effects on the utility or on its ratepayers or if any harmful effects would occur if the transmission service were to be continued. Except for the pilot

program authorized by this section, the commission shall have no power or authority to:

(i) require any electric utility to transmit electricity generated by another entity over the utility's facilities to an ultimate consumer of electricity; or

(ii) issue a certificate for the construction or operation of any facility, the purpose of which includes the transmission of power between a non-utility generator and an ultimate customer.

The commission shall adopt such limits on the availability of transmission service under this provision as it finds necessary to protect ratepayers. The commission must make an affirmative finding, prior to issuing an order, that the pilot program:

(1) is in the public interest;

(2) will not adversely affect the ratepayers of the transmitting utility;

(3) does not unreasonably impair the transmitting utility's reliability;  
and

(4) is priced based on the embedded cost of providing service plus a reasonable rate of return.

If at any time during the course of the pilot program, the commission determines that the program is adversely affecting the ratepayers of the transmitting utility, the commission shall issue an order to terminate the program as soon as practicable.

The amendment was again read.

Senator Henderson offered the following amendment to Floor Amendment No. 11:

#### **Floor Amendment No. 11A**

Amend Floor Amendment No. 11 to **C.S.S.B. 373** by deleting on line 11 after the word "continued" the rest of line 11 through line 17.

The amendment to Floor Amendment No. 11 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 11 as amended, the amendment as amended was adopted by a viva voce vote.

#### **RECORD OF VOTE**

Senator Leedom asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 11 as amended.

Senator Rosson offered the following amendment to the bill:

#### **Floor Amendment No. 14**

Amend Sec. 2.12 of the committee printing for **C.S.S.B. 373** by inserting the following sentence to the new Sec. 2.1511, PURA, between the sentence which ends with "customers" and the sentence that begins with "The mark-ups..." (page 31, line 15)

Such mark-ups are an exceptional form of rate relief which may be recovered from ratepayers only upon entry of a finding by the Commission

that such relief is necessary to maintain the financial integrity of the utility.

The amendment was read and was adopted by a viva voce vote.

Senator Rosson offered the following amendment to the bill:

**Floor Amendment No. 15**

Amend the committee printing for C.S.S.B. 373, which amends Section 2.208 of the Public Utility Regulatory Act as follows:

(1) On page 34, line 54 strike the language after the phrase "Expenses disallowed" and before the colon, and add in lieu thereof:

"The regulatory authority may not permit a public utility to recover the following costs through its rates":

(2) On page 34, line 70, add a new item (5) to read as follows:

"(5) Any calculation of federal income tax expense or interest expense which exceeds the amount of such expense which is expected to be paid by or on behalf of that entity during the period rates are in effect, unless the regulatory authority finds that such treatment would not be consistent with the tax normalization provisions of the Internal Revenue Code."

(3) On page 34, line 65, strike the word "or".

(4) On page 36, line 70, after the word "fines", insert the word "or".

(5) Amend committee printing C.S.S.B. 373 by replacing SECTION 2.24 with the following and renumbering the former SECTION 2.24 and subsequent sections appropriately:

"SECTION 2.24. The changes made to Section 2.208(d) of this Act shall apply to all rate proceedings at the commission where a final and appealable order has not been issued by June 1, 1995."

The amendment was read.

On motion of Senate Wentworth, Floor Amendment No. 15 was tabled by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Bivins, Brown, Cain, Galloway, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sims, Wentworth, Zaffirini.

Nays: Barrientos, Ellis, Gallegos, Harris, Rosson, Sibley, Truan, Turner, West, Whitmire.

**(Senator Montford in Chair)**

Senator Sibley offered the following amendment to the bill:

**Floor Amendment No. 16**

Amend C.S.S.B. 373 by adding an appropriately numbered section to read as follows and renumbering subsequent sections accordingly:

Section \_\_\_\_\_. Sec. \_\_\_\_\_. RIGHT TO CONTRIBUTION. In any action or claim brought against a public utility for personal injury or property damage arising out of or in connection with the utility's transmission or

distribution system, the utility shall have, in addition to any other rights of contribution or indemnity provided by law, a right of contribution against any person (other than another electric utility having retail customers) using or which has used the utility's transmission or distribution system to transmit or sell electricity during the period relevant to the claim or action which is the basis of the claim or action against the utility. This right of contribution shall not extend to an action or claim based solely on the utility's failure to comply with the National Electrical Safety Code or to properly maintain its facilities.

The amendment was read and was adopted by the following vote: Yeas 27, Nays 4.

Yeas: Armbrister, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Turner, Wentworth, Whitmire, Zaffirini.

Nays: Barrientos, Rosson, Truan, West.

Senator Haywood offered the following amendment to the bill:

**Floor Amendment No. 17**

(1) Amend SECTION 1.01 of C.S.S.B. 373, (page 1, line 19-21, committee printing) Section 1.003, Public Utility Regulatory Act of 1995, by striking subsection (13A) in its entirety.

(2) Amend SECTION 2.11 of C.S.S.B. 373 (page 30, line 62, committee printing) Subsection (a), Section 2.106, Public Utility Regulatory Act of 1995, by striking the words "and proceedings initiated" following the word "proceedings"

(3) Amend SECTION 2.11 of C.S.S.B. 373 (page 30, line 63, committee printing) Subsection (a), Section 2.106, Public Utility Regulatory Act of 1995, by striking the words "pursuant to Section 2.051 of this Act" which begins line 63 and precedes the word "shall"

(4) Amend SECTION 2.11 of C.S.S.B. 373 (page 30, line 68, committee printing) Subsection (a), Section 2.106, Public Utility Regulatory Act of 1995, by striking the words "and proceedings initiated pursuant to" following the word "proceedings"

(5) Amend SECTION 2.11 of C.S.S.B. 373 (page 30, line 69, committee printing) Subsection (a), Section 2.106, Public Utility Regulatory Act of 1995, by striking the words "Section 2.051 of this Act" which begins line 69 and which precedes the word "before"

The amendment was read.

**(President in Chair)**

Senator Rosson moved to table Floor Amendment No. 17.

The motion to table was lost by the following vote: Yeas 11, Nays 19.

Yeas: Armbrister, Barrientos, Cain, Lucio, Madla, Moncrief, Montford, Rosson, Truan, Turner, West.

Nays: Bivins, Brown, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Wentworth, Whitmire, Zaffirini.

Absent: Luna.

Question recurring on the adoption of Floor Amendment No. 17, the amendment was adopted by the following vote: Yeas 20, Nays 10.

Yeas: Bivins, Brown, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Madla, Nelson, Nixon, Patterson, Ratliff, Shapiro, Sibley, Sims, Wentworth, Whitmire, Zaffirini.

Nays: Armbrister, Barrientos, Cain, Ellis, Moncrief, Montford, Rosson, Truan, Turner, West.

Absent: Luna.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 18**

Amend C.S.S.B. 373 as follows:

(1) On page 13, on line 37, add the following language to the end of Subsection (e): "Before any penalty may be assessed under this section, the person against whom the penalty may be assessed shall be given 30 days after receiving the notice of the report summarizing the alleged violation from the executive director pursuant to this subsection in which to cure the violation and the person must fail to cure the alleged violation within the 30 day period. The person against whom the penalty may be assessed who claims to have cured the alleged violation shall have the burden of proving to the commission that the alleged violation was cured and was accidental or inadvertent."

The amendment was read and was adopted by a viva voce vote.

Senator Patterson offered the following amendment to the bill:

**Floor Amendment No. 19**

Amend 2.03 of C.S.S.B. 373 by striking Section 2.051(w)(3), page 26, lines 8-11 and relettering subsequent sections accordingly.

Amend 2.04 of C.S.S.B. 373 by striking Section 2.052(b), page 28, lines 31-34 and relettering the subsequent subsection.

Amend 2.07 of C.S.S.B. 373 by striking the following language in Section 2.056, page 29, lines 20-22: "at wholesale to another utility, a qualifying facility, an exempt wholesale generator, or a power marketer" and by striking the following language on page 29, line 24: "at wholesale".

Amend 2.08 of C.S.S.B. 373 by striking Section 2.057(c), page 29, lines 69-70 and page 30, lines 1-4 and relettering the following subsections accordingly.

Amend 2.08 of C.S.S.B. 373 by amending 2.057(g), page 30, lines 21-24 by striking the following language:

"Affiliates of public utilities, exempt wholesale generators, qualifying facilities and all other providers of generation may compete for the business of selling power to a third party that is not an ultimate consumer of electricity."

The amendment was read.

On motion of Senator Patterson and by unanimous consent, Floor Amendment No. 19 was withdrawn.

The bill as amended was passed to engrossment by a viva voce vote.

#### **RECORD OF VOTE**

Senator Barrientos asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

#### **MESSAGE FROM THE HOUSE**

House Chamber  
April 25, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

**H.B. 514**, Relating to the employment of inmates of the institutional division of the Texas Department of Criminal Justice by contractors constructing institutional division facilities.

**H.B. 1366**, Relating to information in county records and on death certificates concerning places in which remains are interred; providing civil penalties.

**H.B. 3104**, Relating to an exemption of certain charitable gift annuities from regulation under the Insurance Code.

Respectfully,

Cynthia Gerhardt, Chief Clerk  
House of Representatives

#### **SENATE RULE 11.11 SUSPENDED (Posting Rule)**

On motion of Senator Ellis and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Intergovernmental Relations might meet tomorrow.

#### **SENATE RULE 11.19 SUSPENDED (Posting Rule)**

On motion of Senator Moncrief and by unanimous consent, Senate Rule 11.19 was suspended in order that the Criminal Justice Subcommittee on Law Enforcement Officer Standards and Education might consider the following bills upon adjournment today:

**S.B. 1135**  
**S.B. 1337**  
**S.B. 225**



---

**NOTICE OF SESSION TO HOLD  
LOCAL AND UNCONTESTED BILLS CALENDAR**

Senator Moncrief announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held at 7:30 a.m. tomorrow and that all bills would be considered on second reading in the order in which they are listed.

**CONGRATULATORY RESOLUTIONS**

**S.R. 784** - By Haywood: Recognizing the merger of Lockheed and Martin Marietta to form Lockheed Martin.

**S.R. 785** - By Cain: Congratulating Mr. and Mrs. Earnest Berry of Celeste on their 50th wedding anniversary.

**S.R. 786** - By Cain: Recognizing Floyd Wagstaff for his contributions to Tyler Junior College and the citizens of Tyler.

**S.R. 787** - By Cain: Congratulating Dr. Kyle Grant Wilkison of Commerce on his notable achievements in the field of history.

**S.R. 788** - By Lucio: Celebrating the "Week of the Young Child," which annually focuses public attention on the needs of young children and their families.

**S.R. 789** - By Shapiro: Congratulating the Kiosco School Based Mental Health Clinic, which was selected as one of the 1995 Best of Texas Programs.

**S.R. 790** - By Shapiro: Congratulating Practical Parent Education of Plano for its selection as one of the Best of Texas Programs for 1995.

**S.R. 791** - By Sibley: Recognizing Rena Michelle Stephens of Hamilton, who has been named one of nine recipients of the 1995 Governor's Award for Outstanding Volunteer Service.

**H.C.R. 64** - (Cain): Congratulating Dr. Stephen Charles Nash of Dallas on his election as president of the Interdenominational Ministerial Alliance.

**H.C.R. 165** - (West): Congratulating the Reverend Dr. C.A.W. Clark, Sr., of Dallas for his spiritual leadership during the past 65 years.

**RECESS**

On motion of Senator Truan, the Senate at 7:07 p.m. recessed until 7:30 a.m. tomorrow for the Local and Uncontested Bills Calendar.

---

**APPENDIX**

---

**REPORTS OF STANDING COMMITTEES**

The following committee reports were received by the Secretary of the Senate:

April 25, 1995

FINANCE — S.B. 1530, C.S.S.B. 345

STATE AFFAIRS — H.C.R. 105, H.B. 1089 (Amended), H.B. 947, H.B. 1090, S.B. 21, S.B. 991, S.B. 1237, S.B. 954, S.B. 1390 (Amended), C.S.S.B. 1231, C.S.S.B. 1128, C.S.S.B. 1346, C.S.S.B. 1426

**SENT TO GOVERNOR**

(April 25, 1995)

S.C.R. 120	S.B. 550
S.B. 314	S.B. 821
S.B. 260	S.B. 864
S.B. 371	S.B. 958
S.B. 436	S.B. 1172

**FIFTY-SEVENTH DAY**

(Continued)

(Wednesday, April 26, 1995)

**AFTER RECESS**

The Senate met at 7:30 a.m. and was called to order by Senator Harris.

**LOCAL AND UNCONTESTED BILLS CALENDAR**

The Presiding Officer announced that the time had arrived for consideration of the Local and Uncontested Bills Calendar.

Pursuant to Senate Rule 9.03(d), the following bills were laid before the Senate, read second time, amended where applicable, passed to engrossment/third reading, read third time, and passed (vote on Constitutional Three-Day Rule and final passage indicated after the caption of each bill):

**H.B. 335** (Patterson) Relating to the period for filing a petition for a place on the ballot for the board of directors of the Sweeny Hospital District. (31-0) (31-0)

**H.B. 338** (Haywood) Relating to the authority of the Stamford Hospital District to borrow money. (31-0) (31-0)

**H.B. 432** (Patterson) Relating to the membership of the board of directors of the La Porte Area Water Authority. (31-0) (31-0)

**H.B. 1250** (Sibley) Relating to training for members of the governing boards of public institutions of higher education. (31-0) (31-0)